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Contents

Federal Register

Vol. 71, No. 200

Tuesday, October 17, 2006

Administration on Aging
See Aging Administration

Aging Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61060–61061

Agricultural Marketing Service
RULES
Dairy products; grading and inspection:
Fees and charges increase, 60805–60807
Prunes (fresh) grown in Washington and Oregon, 60807–60810
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61014–61016

Agricultural Research Service
NOTICES
Meetings:
National Animal Disease Center Scientific Review Panel, 61016–61017

Agriculture Department
See Agricultural Marketing Service
See Agricultural Research Service

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 61031

Customs and Border Protection Bureau
NOTICES
IRS interest rates used in calculating interest on overdue accounts and refunds, 61062–61063

Defense Acquisition Regulations System
PROPOSED RULES
Acquisition regulations:
Export-controlled information and technology, 61012

Defense Department
See Defense Acquisition Regulations System
NOTICES
Arms sales notification; transmittal letter, etc., 61031–61032

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Sodium permanganate; control as List II chemical, 60823–60827

Education Department
NOTICES
Meetings:
National Mathematics Advisory Panel, 61032–61033
Senior Executive Service Performance Review Board; membership, 61033

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

Energy Information Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61033–61035

Environmental Protection Agency
RULES
Air programs:
Ambient air quality standards, national—
Particulate matter, 61144–61233
Particulate matter; Regulatory Impact Analysis, 60853–60854
Organization, functions, and authority delegations:
Confederated Tribe of Umatilla Indian Reservation, 60852–60853
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Maine, 60937–60952
Air quality implementation plans; approval and promulgation; various States:
Arizona, 60934–60937

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
India; petroleum refinery and petrochemicals facility; finance application, 61052

Federal Aviation Administration
RULES
Class E airspace, 60814–60819
PROPOSED RULES
Airworthiness directives:
Bell Helicopter Textron, 60926–60927
MD Helicopters, Inc., 60927–60928
Raytheon, 60924–60926

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Colorado, 60869–60870
Georgia, 60870–60871
Kansas, 60866–60869
North Carolina, 60871–60923
South Carolina, 60917–60919
Various States, 60854–60917
PROPOSED RULES
Flood elevation determinations:
Alabama and Kentucky, 60985–60986
Georgia, 60983–60985
Illinois, 60961–60963

Mississippi and Wisconsin, 60980–60983
New Hampshire and North Carolina, 60988–61012
North Carolina, 60952–60961
North Carolina and Guam, 60986–60988
Various States, 60963–60980

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 61043–61044
Environmental statements; notice of intent:
Panhandle Eastern Pipeline Co., LP, 61044–61046
Hydroelectric applications, 61046–61049
Meetings:
California Water Resources Department, 61049–61050
Meetings; Sunshine Act, 61050–61052
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission, LLC, 61035
California Independent System Operator Corp., 61035
Carolina Gas Transmission Corp. et al., 61035–61036
Dauphin Island Gathering Partners, 61036
East Tennessee Natural Gas, LLC, 61036–61037
Egan Hub Storage, LLC, 61037
Maritimes & Northeast Pipeline, L.L.C., 61037–61038
Natural Gas Pipeline Co. of America, 61038
Northern Natural Gas Co., 61038–61039
Paiute Pipeline Co., 61039
Questar Corp. et al., 61039
Rendezvous Pipeline Co., L.L.C., 61040
SAF Hydroelectric LLC et al., 61040
Southern LNG, Inc., et al., 61040–61041
Texas Eastern Transmission, LP, 61041
Transcontinental Gas Pipe Line Corp., 61041–61042
Transwestern Pipeline Co., LLC, 61042–61043

Federal Housing Finance Board
RULES
Privacy Act; implementation, 60810–60814
NOTICES
Privacy Act; systems of records, 61052–61058

Federal Motor Carrier Safety Administration
NOTICES
Meetings:
Comprehensive Safety Analysis 2010 Initiative; public listening session, 61131–61137

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
BNSF Railway Co, 61137
Pioneer Valley Railroad, 61137–61138
Traffic control systems; discontinuance or modification:
CSX Transportation, Inc., 61138

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 61058
Formations, acquisitions, and mergers, 61059–61060
Formations, acquisitions, and mergers; correction, 61058–61059
Permissible nonbanking activities, 61060
Meetings; Sunshine Act, 61060

Federal Transit Administration
PROPOSED RULES
Charter service:
Grant recipients prohibition from providing charter bus service; negotiated rulemaking advisory committee; membership and meetings, 60460, [**Editorial Note:** This document was inadvertantly placed under the Federal Aviation Administration in the **Federal Register** table of contents of October 13, 2006]

Financial Management Service
See Fiscal Service

Fiscal Service
RULES
Financial Management Service:
Judgment Fund and private relief bills; payment rules and procedures, 60848–60852
Surety corporations; federal process agents; appointments, 60847–60848

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Texas Chenier Plain National Wildlife Refuge Complex, TX, 61063–61064

Food and Drug Administration
NOTICES
Debarment orders:
Butkovitz, Anne L., 61061

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Georgia
E.I. du Pont de Nemours & Co., Inc.; crop protection products manufacturing facilities, 61017
Tennessee, 61017–61018

Geological Survey
NOTICES
Meeting:
Scientific Earthquake Studies Advisory Committee, 61064

Health and Human Services Department
See Aging Administration
See Food and Drug Administration

Homeland Security Department
See Customs and Border Protection Bureau
See Federal Emergency Management Agency

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service
NOTICES
Meetings:
Exxon Valdez Oil Spill Trustee Council, 61063

Internal Revenue Service
RULES
Procedure and administration:
Levy; collection due process procedures relating to notice and hearing opportunity, 60827–60835

Return information disclosure by officers and employees for investigative purposes
Correction, 60827
Tax lien filing notice; collection due process procedures; notice and hearing opportunity, 60835–60843

International Trade Administration
NOTICES
Antidumping:
Honey from—-
Argentina, 61018
Pure magnesium from—
China, 61019–61021
Stainless steel sheet and strip in coils from—
Germany, 61021

Justice Department
See Drug Enforcement Administration
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61070–61071

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61071–61072

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming, 61064–61066
Realty actions; sales, leases, etc.:
Oregon, 61066–61069
Survey plat filings:
Idaho, 61069

Minerals Management Service
NOTICES
Environmental statements; availability, etc.:
Outer Continental Shelf—
Oil and gas leasing; 2007-2012 program; hearing, 61069

National Aeronautics and Space Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61072
Committees; establishment, renewal, termination, etc.:
Advisory Council, 61072

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 61072

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Northeastern United States fisheries—
Atlantic herring; correction, 61012
Meetings:
Pacific Fishery Management Council, 61012–61013
NOTICES
Endangered and threatened species:
Black abalone; status review, 61021–61022
Species of concern list; revision, additions and deletions, and candidate species definition, 61022–61025
Exempted fishing permit applications, determinations, etc., 61025–61027
Marine mammals:
Incidental taking; authorization letters, etc.—
Bay Marina Management Inc.; Pier 39 Marina, San Francisco, CA; California sea lions and Pacific harbor seals, 61027–61031
Reports and guidance documents; availability, etc.:
U.S. Climate Change Science Program Synthesis and Assessment Product Prospectus, 61031

National Park Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61069–61070

National Science Foundation
NOTICES
Meetings:
Business and Operations Advisory Committee, 61073
Cyberinfrastructure Advisory Committee, 61073
Engineering Advisory Committee, 61073
Material Research Proposal Review Panel, 61073

Nuclear Regulatory Commission
PROPOSED RULES
Nuclear power plants; licenses, certifications, and approvals, 61330–61359
NOTICES
Environmental statements; availability, etc.:
Nebraska Public Power District, 61074–61075
Meetings; Sunshine Act, 61075
Reports and guidance documents; availability, etc.:
Control room envelope habitability; model safety evaluation; consolidated line item improvement process, 61075–61084

Occupational Safety and Health Administration
RULES
Shipyard employment safety and health standards:
Fire protection, 60843–60847
PROPOSED RULES
Shipyard employment safety and health standards:
Fire protection, 60932–60934

Personnel Management Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61084–61085
Health benefits, Federal employees:
Medically underserved areas (2007 CY), 61086

Presidential Documents
PROCLAMATIONS
Special observances:
National Energy Awareness Month (Proc. 8068), 61361–61364
White Cane Safety Day (Proc. 8069), 61365–61366
EXECUTIVE ORDERS
Sudan; blocking property of and prohibiting transactions with the Government (EO 13412), 61367–61371

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
MONY Life Insurance Co. of America et al., 61086–61111

Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 61111–61112
National Association of Securities Dealers, Inc., 61112–61116
Philadelphia Stock Exchange, Inc, 61116–61117

Small Business Administration
NOTICES
Disaster loan areas:
Arizona, 61117

Social Security Administration
RULES
Social security benefits and supplemental security income:
Federal old age, survivors, and disability insurance, and aged, blind, and disabled—
Disability benefits; suspension during continuing disability reviews, 60819–60823
NOTICES
Grants and cooperative agreements, availability, etc.:
Work Incentives Planning and Assistance Program, 61117–61129
Meetings:
Work Incentives Planning and Assistance Program; pre-application teleconference seminars, 61129–61130

Special Counsel Office
NOTICES
Notification and Federal Employee Antidiscrimination Retaliation Act (No FEAR Act); implementation, 61130–61131

State Department
PROPOSED RULES
Passports:
Card format passport; fee schedule changes, 60928–60932
NOTICES
Culturally significant objects imported for exhibition:
Masterpieces of Russian Art, 61131

Surface Transportation Board
NOTICES
Meetings:
Grain; rail transportation; hearing, 61138–61139
Railroad operation, acquisition, construction, etc.:
Coast Belle Rail, LLC, 61139
Santa Maria Valley Railroad Co., 61139–61140

Thrift Supervision Office
NOTICES
Applications, hearings, determinations, etc.:
Citizens Community Federal et al., 61141

Transportation Department
See Federal Aviation Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 61140
Foreign ownership of U.S. securities survey; reporting requirements, 61140–61141

Veterans Affairs Department
NOTICES
Meetings:
Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board, 61141–61142

Separate Parts In This Issue

Part II
Environmental Protection Agency, 61144–61233

Part III
Environmental Protection Agency, 61236–61328

Part IV
Nuclear Regulatory Commission, 61330–61359

Part V
Executive Office of the President, Presidential Documents, 61361–61366

Part VI
Executive Office of the President, Presidential Documents, 61367–61371

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8068 61363
8069 61365

Executive Orders:

13067 (See EO 13412) 61369
13412 61369

7 CFR

58 60805
924 60807
944 60807

10 CFR

Proposed Rules:

2 61330
50 61330
51 61330
52 61330

12 CFR

910 60810
913 60810

14 CFR

71 (7 documents) 60814, 60815, 60816, 60817, 60818

Proposed Rules:

39 (3 documents) 60924, 60926, 60927

20 CFR

404 60819
416 60819

21 CFR

1310 60823

22 CFR

Proposed Rules:

22 60928
51 60928

26 CFR

301 (3 documents) 60827, 60835

29 CFR

1915 60843

Proposed Rules:

1915 60932

31 CFR

224 60847
256 60848

40 CFR

49 60852
50 (2 documents) 60853, 61144
53 61236
58 61236

Proposed Rules:

52 (2 documents) 60934, 60937
81 60937

44 CFR

65 60854
67 (8 documents) 60864, 60866, 60869, 60870, 60871, 60884, 60917, 60919

Proposed Rules:

67 (8 documents) 60952, 60961, 60963, 60980, 60983, 60985, 60986, 60988

48 CFR

Proposed Rules:

204 61012
235 61012
252 61012

50 CFR

Proposed Rules:

648 61012
660 61012

Rules and Regulations

Federal Register
Vol. 71, No. 200
Tuesday, October 17, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[Docket Number DA–05–04]

RIN 0581–AC55

Increase in Fees for Federal Dairy Grading and Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) will increase, by approximately 10 percent, the hourly fees charged for Federal dairy grading and inspection services. Dairy grading and inspection services are voluntary and are financed through user-fees assessed to participants in the program. These revisions are necessary in order to recover, as nearly as practicable, the increase in salaries of Federal employees and increases in Agency costs, and to ensure that the Dairy Grading Branch operates on a financially self-supporting basis.

DATES: Effective October 18, 2006.

FOR FURTHER INFORMATION CONTACT: Dana H. Coale, Deputy Administrator, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Stop 0225, room 2968-South, 1400 Independence Avenue, SW., Washington, DC 20250–0225, or call (202) 720–4392.

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 12988

This rule has been determined to be ''not significant'' for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not retroactive. This rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

Pursuant to the requirement set forth in the Regulatory Flexibility Act, AMS has considered the economic impact of this action on small entities. It has been determined that its provisions would not have a significant economic effect on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees. If a plant is part of a larger company operating multiple plants that collectively exceed the 500 employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Under the Agricultural Marketing Act of 1946, the Dairy Grading Branch, AMS, provides voluntary Federal inspection and dairy product grading services to about 350 plants. About 210 of these users are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). Manufacturing plants participating in the voluntary plant inspection program have their facility inspected against established USDA ''General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service'' construction and sanitation requirements. Dairy products manufactured in facilities complying with the USDA inspection requirements are eligible to have their output graded against official quality standards and specifications established by AMS and certain contract provisions between buyer and seller. Products tested and graded by the Dairy Grading Branch have certificates issued describing the product's quality and condition.

AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting. To reduce costs, the Dairy Grading Branch has continued to automate its business practices. Progress to date has been significant and has resulted in savings equal to two staff years to the program. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services and information to users of these services.

Employee salaries and benefits now account for nearly 73 percent of the operating costs of the Dairy Grading Branch. Grading fees were adjusted last in 2004 (69 FR 8797). Salary increases and locality adjustments, effective January 2005 and January 2006, have resulted in an increase in employee cost of 6.1 percent. As a result, annual salary and benefit costs to the program for Fiscal Year (FY) 2006 are approximately $240,000 more than for the same number of employees in FY 2004. Inflation raised non-salary costs approximately 6.8 percent for the two-year period ending December 2005. It is expected that non-salary operating expenses will continue to increase at a rate of 3.0 percent per year. Current revenue projections using Dairy Grading Branch's current fee schedule will not provide income sufficient to cover these escalating program operation costs and maintain reserves (4 months of costs) according to AMS policy (AMS Directive 408.1).

Since projected revenues will not cover program costs while maintaining an adequate reserve, the Dairy Grading Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services. Without a fee increase, total revenue projections for FY 2006 are $4.980 million. Total costs for the same period of time are projected to be $5.778 million. The shortfall will reduce the trust fund balance to $1.578 million or 3.3 months of operating reserve at the end of FY 2006 which is below Agency policy.

AMS estimates these fee increases will provide the Dairy Grading Branch an additional $504,000 annually to recover program costs and to provide for continued automation of business practices.

This rule will raise the fees charged to businesses for voluntary plant inspections, grading services for dairy and related products, and the evaluation of food processing equipment. However,

the impact on all businesses, including small entities is very similar. Even though fees will be increased approximately 9.7% for non-resident services and 10.5% for continuous resident services, these fee increases should not significantly affect these entities. Adjusted for inflation, the new fee schedule is actually less than in 1998. These businesses are under no obligation to use these voluntary user-fee based services and any decision on their part to discontinue the use of the services would not prevent them from marketing their products.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that this rule would have no impact on reporting, recordkeeping, or other compliance requirements for entities currently using voluntary Federal dairy inspection and grading services because they would remain identical to the current requirements.

This action does not require additional information collection that requires clearance by OMB. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same information from all participating dairy plants does not significantly disadvantage any plant that is smaller than the industry average.

Action

The Secretary of Agriculture is authorized by the Agricultural Marketing Act of 1946 (AMA), as amended (7 U.S.C. 1621, *et seq.*), to provide voluntary Federal dairy inspection and grading services to facilitate the orderly marketing of dairy products and to enable consumers to obtain the quality of dairy products they desire. The AMA also provides for the collection of reasonable fees from users of the Federal dairy inspection and grading services to cover the cost of providing these services. The hourly fees are established by distributing the program's projected operating costs over the estimated service-revenue hours provided to users. AMS continually reviews its cost structure to assure it is operating efficiently while maintaining the resources necessary to meet industry's demand for services. Periodically, fees must be adjusted to ensure that the program remains financially self-supporting.

To reduce costs, the Dairy Grading Branch has continued to automate its business practices. Progress to date has been significant and has resulted in savings equal to two staff years to the program. Further enhancements in automated business practices will continue to improve the efficiency and timeliness of providing inspection and grading services and information to users of these services.

Employee salaries and benefits now account for nearly 73 percent of the operating costs of the Dairy Grading Branch. Grading fees were last adjusted in 2004 (69 FR 8797). Salary increases and locality adjustments, effective January 2005 and January 2006, have resulted in an increase in employee cost of 6.1 percent. As a result, annual salary and benefit costs to the program for FY 2006 are approximately $240,000 more than for the same number of employees in FY 2004. Inflation raised non-salary costs approximately 6.8 percent for the two-year period ending December 2005. It is expected that non-salary operating expenses will continue to increase at an annual rate of 3.0 percent and that salary and benefits will increase by 2.1 percent in January 2007. Current revenue projections using Dairy Grading Branch's current fee schedule will not provide income sufficient to cover these escalating program operation costs and maintain reserves (4 months of costs) according to AMS policy (AMS Directive 408.1).

Since projected revenues will not cover program costs while maintaining an adequate reserve, the Dairy Grading Branch will be put in an unstable financial position that will adversely affect the ability to provide dairy inspection and grading services. Without a fee increase, total revenue projections for FY 2006 are $4.980 million. Total costs for the same period of time are projected to be $5.778 million. The shortfall, if allowed to continue, would have reduced the trust fund balance to $1.578 million or 3.3 months of operating reserve at the end of FY 2006 which is below Agency policy.

In view of the above considerations, AMS proposed to increase the hourly fees associated with Federal dairy grading and inspection services. Currently the fees are $57.00 per hour for continuous resident services and $62.00 per hour for non-resident services. The proposed increases result in fees of $63.00 per hour for continuous resident services and $68.00 per hour for non-resident services between the hours of 6 a.m. and 6 p.m. The proposed fees represent increases of $6.00 per hour (10.5 percent) for continuous resident and $6.00 per hour (9.7 percent) for non-resident services. The fee for non-resident services between the hours of 6 p.m. and 6 a.m. would be $74.80 per hour. For services performed in excess of 8 hours per day and for services performed on Saturday, Sunday, and legal holidays, 1½ times the base fees would apply and result in increases to $94.50 per hour for resident grading and to $102.00 per hour for non-resident grading services.

AMS estimates these fee increases will provide the Dairy Grading Branch an additional $504,000 annually to recover program costs including providing for continued automation of business practices.

A notice of proposed rulemaking was published in the **Federal Register** on April 20, 2006 (70 FR 20351). Dairy Programs received two comments during this period.

The first comment received was a public submission in opposition to the fee increase. The commenter expressed concern that these fee increases would increase dairy product prices, and suggested that other methods of increasing revenue, such as increased use of appropriated funds, be explored. Dairy inspection and grading services are voluntary, and while they are used extensively by manufacturers of certain dairy products, they are not used by all segments of the dairy industry. This modest increase in fees is not likely to generate substantial price increases. Further, dairy inspection and grading programs are supported entirely by these user fees, not through appropriated funds. This fee increase is necessary for the program to remain self-sufficient and maintain reasonable operating reserves.

The second comment was received from the American Butter Institute (ABI). ABI expressed concern that the rate of increase in grading and inspection fees exceeds the rate of inflation since 2004, and that when combined with the 2004 fee increase, constitutes fees that are 25 percent higher than they were 30 months ago. ABI also encourages that further automation of business practices be explored to offset a larger portion of the projected revenue shortfall, rather than a large increase in fees. By our calculation, this increase will result in grading fees that are about 21 (resident grader) to 24 percent (non-resident grader) higher than that in March 2004. Prior to the April 2004 increase, grading fees had remained unchanged for 75 months. Thus on average, grading fees will have increased only about 2.4 to 2.7 percent annually since 1998, when this increase becomes effective. This longer

term rate of increase is lower than average rate of inflation since 1998. Adjusted for inflation, grading fees after this increase will be lower in real dollars than they were in 1998. Dairy Programs continues to evaluate the business practices of its grading and inspection programs, and will implement, as they are identified, measures that should result in increased program efficiency.

Each of the comments received was carefully considered. Nevertheless, Dairy Programs' current grading and inspection fees are not adequate, and this increase in fees is necessary. Dairy Programs has and continues to seek cost savings by reducing overhead and travel costs, and increasing program efficiency through enhanced automation of business practices.

Pursuant to the Administrative Procedures Act (5 U.S.C. 553), good cause is found to make this effective less than 30 days after publication in the **Federal Register**. This rule will take effect the next day following publication to minimize financial losses for dairy grading and inspection services. Revenues are not sufficient to cover program costs or allow the Dairy Grading Branch to maintain adequate operating reserves. The Branch is currently operating with a monthly revenue loss of $42,000, which will adversely affect its ability to provide inspection and grading services.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

■ For the reason set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—GRADING AND INSPECTION, GENERAL SPECIFICATIONS FOR APPROVED PLANTS AND STANDARDS FOR GRADES OF DAIRY PRODUCTS

■ 1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

Subpart A—[Amended]

§ 58.43 [Amended]

■ 2. In § 58.43, ''$62.00'' is removed and ''$68.00'' is added in its place, and ''$68.20'' is removed and ''$74.80'' is added in its place.

§ 58.45 [Amended]

■ 3. In § 58.45, ''$57.00'' is removed and ''$63.00'' is added in its place.

Dated: October 10, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17191 Filed 10–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 924 and 944

[Docket No. FV06–924–1 FIR]

Fresh Prunes Grown in Designated Counties in Washington and in Umatilla County, OR; Suspension of Handling Regulations, Establishment of Reporting Requirements, and Suspension of the Fresh Prune Import Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule suspending the handling regulations prescribed under the Washington-Oregon fresh prune marketing order for the 2006 and future seasons. The marketing order regulates the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, and is administered locally by the Washington-Oregon Prune Marketing Committee (Committee). This rule continues in effect the action that suspended the minimum grade, size, quality, maturity, and inspection requirements for fresh prune handlers under the marketing order. During the suspension of the handling regulations, reports from handlers will continue to be required to obtain information necessary to administer the marketing order. In addition, this rule continues in effect the suspension of fresh prune import inspection and minimum quality, grade, size, and maturity requirements.

DATES: *Effective Date:* November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent or Gary Olson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland, OR 97204; Telephone: (503) 326–2724, Fax: (503) 326–7440, or e-mail: *Barry.Broadbent@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 924, as amended (7 CFR 924), regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' This rule is also issued under section 8e of the Act regarding the establishment of inspection and quality, grade, size, or maturity requirements on imports of commodities that are similarly regulated under Federal marketing orders.

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule continues in effect the action that suspended the handling regulations prescribed under the order for the 2006 and future seasons.

Specifically, this rule suspends the minimum grade, size, quality, maturity, and inspection requirements under the order. In addition, this rule continues in effect the suspension of regulation of fresh prune import under section 8e of the Act.

Furthermore, this rule continues in effect the action that established a new handler reporting requirement. The new handler report provides the Committee with information that has previously been available from the Federal-State Inspection Service (Inspection Service). As a result of suspending the handling regulations, including mandatory inspections, information from the Inspection Service is no longer available to the Committee to compile industry statistics and to assess handlers. The new handler reporting requirement allows the Committee to obtain information directly from handlers similar to the information that has been obtained previously from the Inspection Service.

Section 924.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for fresh prunes grown in the production area. Section 924.53 authorizes the modification, suspension, or termination of regulations issued under § 924.52.

Section 924.55 provides that whenever the handling of any variety of fresh prunes is regulated pursuant to § 924.52 or § 924.53, such prunes must be inspected by the Inspection Service, and certified as meeting the applicable requirements. The cost of the inspection and certification is borne by handlers.

Section 924.60 authorizes the Committee, with the approval of USDA, to require reports and other information from handlers that are necessary for the Committee to perform its duties.

Minimum grade, size, quality, maturity, and inspection requirements for fresh prunes regulated under the order are specified in § 924.319 (the section suspended by this rule). When effective, § 924.319, with exemptions for certain varieties and types of shipments, provides that all fresh prunes grade at least U.S. No. 1, except that at least two-thirds of the surface of the prune is required to be purplish in color, and such prunes measure not less than 1¼ inches in diameter as measured by a rigid ring. The regulation includes a minimum quantity exemption, as well as specific tolerances for prunes that fail to meet color, minimum diameter, and quality requirements.

Regulation regarding the importation of fresh prunes into the United States under Section 8e of the Act is set forth in § 944.700.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington-Oregon fresh prunes which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The USDA reviews Committee recommendations, information submitted by the Committee, and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 16, 2006, meeting, the Committee unanimously recommended suspending the handling regulations and establishing a new handler reporting requirement for the 2006 and future seasons.

The objective of handling regulation has been to ensure that only acceptable quality fresh prunes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when the handling regulations are in effect) currently exceeds the benefits derived.

Fresh prune prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Consequently, the Committee has, for a number of years, explored the possibility of reducing the industry's costs through the elimination of mandatory inspections and the accompanying fees. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality fresh prunes being shipped to fresh markets, thereby affecting consumer demand. Also, there is some concern that, should overall quality decline, the Washington-Oregon fresh prune industry could lose sales to other prune producing regions.

After much consideration, the Committee recommended the suspension of the handling regulations for the 2006 and future seasons, but stipulated that the Committee would assess marketing conditions annually to determine if lifting the suspension is warranted. The suspension enables the industry to realize needed cost savings while the impact of the suspension is evaluated, on an ongoing basis, by the Committee. Should the market situation so dictate, the Committee may take appropriate action to recommend reinstating regulation.

This final rule enables Washington-Oregon fresh prune handlers to continue to ship prunes without regard to minimum grade, size, quality, maturity, and inspection requirements. This allows handlers to decrease their total costs by eliminating the expenses associated with mandatory inspection. This rule does not restrict handlers from seeking product inspection on a voluntary basis if they find inspection desirable. The Committee will evaluate the effect the suspension of the handling regulations has on market conditions and on producer returns each year the suspension is in effect, and, if necessary, make recommendations to USDA for changes.

The suspension of the handling regulation and mandatory inspections also results in the elimination of the inspection certificates that have been generated by the Inspection Service and forwarded to the Committee. The Committee used these certificates as the basis for assessment billing from handlers and for compiling prune industry statistics. In the absence of the inspection certificates, handlers are now required to submit reports directly to the Committee to facilitate the collection of assessments and the compilation of industry statistics.

Therefore, a new § 924.160 *Reports* has now been added which requires each handler to submit to the Committee, on or before October 30 of each year, a ''Handler Statement for Washington-Oregon Fresh Prunes'' containing the following information: (a) The handler's name and address; (b) the name and address of each producer; (c) the quantity, in field run tons, of early and late fresh prunes handled by each handler; (d) the assessment due and enclosed; (e) the name, telephone number, and signature of the authorized person completing the form; and (f) the date the form is signed.

Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The new reporting requirement facilitates the Committee's ability to collect assessments needed to cover necessary program costs. Even though reporting requirements are increased, this final rule, through the elimination of inspection and certification requirements, is expected to reduce overall industry expenses.

Consistent with the suspension of § 924.319, this final rule also suspends § 924.110 of the rules and regulations in effect under the order. Section 924.110 contains provisions for handlers to

apply for waivers from mandatory inspection when such inspection is not readily available from the Inspection Service. With the suspension of regulation, such waivers are no longer necessary.

Contained within the handling regulations (§ 924.319(b)) is a provision allowing the handling of any individual shipment which, in the aggregate, does not exceed 500 pounds net weight of Stanley or Merton variety prunes, or 350 pounds net weight of any other variety of prunes, without regard to the inspection and assessment requirements issued under the order. Regardless of the suspension of handling regulations, the Committee desires that this provision remain effective for the purpose of providing a minimum quantity exemption from assessments. Thus, a new § 924.121 *Minimum quantity exemption* is established. This section essentially continues the provision with the same minimum quantity exemption threshold as in 924.319(b), but in regards to the assessment requirements contained in § 924.41 only.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including fresh prunes, imports of that commodity must meet the same or comparable requirements. Section 944.700 contains the regulations for fresh prune imports. Since this final rule indefinitely suspends the handling regulation for domestic fresh prunes, including grade, size, quality, and maturity requirements, the regulation of imported fresh prunes is suspended indefinitely as well.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Currently, there are 7 handlers of Washington-Oregon fresh prunes who are subject to regulation under the order and approximately 100 fresh prune producers in the regulated area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $6,500,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Fresh prune production has been approximately 5,000 to 7,000 tons per year for the past several years. The Committee estimates that all Washington-Oregon fresh prune handlers combined ship less than $6,500,000 worth of prunes on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington-Oregon fresh prune producers, average annual producer receipts are approximately $13,000, which is considerably less than the $750,000 threshold. In view of the foregoing, it can be concluded that all of the handlers and producers of Washington-Oregon fresh prunes may be classified as small entities.

This final rule continues in effect the suspension of the handling regulations specified in § 924.319, as well as the fresh prune import regulations specified in § 944.700. Furthermore, this rule continues in effect the modified minimum quantity exemption as a new § 924.121 and the addition a new reporting requirement as § 924.160. The suspension of the handling regulation will allow the Washington-Oregon fresh prune industry to market fresh prunes without regard to minimum grade, size, quality, maturity, and inspection requirements. Authority for this action is provided in §§ 924.53 and 924.60.

The handling regulations help ensure that only acceptable quality fresh prunes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification exceeds the benefits derived. The Committee believes that the demands of wholesale buyers and consumers will drive handlers and producers to maintain a high level of product quality without the necessity of minimum quality standards and mandatory inspections. The Committee will review the suspension of the handling regulations and all relevant related issues on an annual basis. The handling regulations can be reinstated by way of Committee recommendation and USDA approval through the informal rulemaking process.

Fresh prune prices have been at low levels in recent years, and many producers have faced difficulty covering their production costs. In response to the adverse economic conditions being experienced by the industry, the Committee discussed the possibility of reducing costs through the elimination of mandatory inspection and the related fees. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality fresh prunes being shipped to fresh markets. Also, should fruit quality decline, there is some concern among Committee members that the Washington-Oregon fresh prune industry could lose sales to other prune producing regions.

While acknowledging these concerns, the Committee believes that the benefits derived from suspending the regulations outweigh the potential costs. The Committee also believes that the current marketing situation makes regulation unnecessary, that the cost of regulation outweighs the benefits, and that the conditions leading to the suspension will perpetuate well into the future. Therefore, the Committee recommended that the suspension of the handling regulations be effective not only for the upcoming season, but for future seasons as well. The indefinite suspension will alleviate the need for annual rulemaking to maintain the suspension while allowing the Committee to monitor the impacts of the suspension and consider appropriate actions for ensuing seasons. If and when the industry experiences changes in the marketing environment that would make reinstating the handling regulations necessary, the Committee has the ability to quickly respond.

This final rule enables handlers to ship prunes without regard to the minimum grade, size, quality, maturity, and inspection requirements of the order for the 2006 and future seasons. This allows handlers to decrease costs by eliminating the costs associated with mandatory inspection but does not, however, restrict handlers from seeking inspection on a voluntary basis if they find inspection desirable. The Committee will evaluate the effect that suspension of the handling regulations has on marketing conditions and on producer returns at their annual meeting each spring.

The suspension of the handling regulations results in the elimination of mandatory inspections and, in turn, the inspection certificates that are generated by the Inspection Service and subsequently provided to the Committee. The Committee has in the

past used such certificates for assessment billing purposes and for compiling industry statistics. As a result of the suspension of the handling regulations, the Committee will require a report directly from each handler for the purpose of obtaining information on which to collect assessments and generate statistical information.

The Committee anticipates that this rule will not negatively impact small handlers and producers because it suspends minimum grade, size, quality, maturity, and inspection requirements. The total cost of inspection and certification for fresh shipments of Washington-Oregon fresh prunes during the 2005 marketing season is estimated by the Committee to have been $0.23 per hundredweight, or approximately $27,000 total. This represents approximately $4,000 per handler. Since handlers may continue to have their prunes voluntarily inspected, the Committee expects that some handlers will continue to have at least a portion of their fresh prunes inspected and certified by the Inspection Service.

Alternatives to the suspension of the handling regulations considered by the Committee included maintaining the status quo, suspending the regulations for one season only, and terminating the marketing order in its entirety. The Committee believes, however, that the continuation of regulation would be a financial burden on the industry, given the current market situation and outlook. With that perspective, continuing to regulate was not a viable option to the Committee. The Committee also discussed suspending regulation one season at a time, but rejected that option as well. Finally, the Committee considered terminating the order in its entirety, but declined to take that action because the Committee continues to believe that the order has purpose, even without handling regulation.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington-Oregon fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 16, 2006, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

An interim final rule concerning this action was published in the **Federal Register** on May 9, 2006 (71 FR 26817). Copies of the rule were mailed by the Committee's staff to all Committee members and fresh prune handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register and the USDA. A 60-day comment period ending July 10, 2006, was provided to allow interested persons to respond to the interim final rule. Two comments were received during the comment period. However, as neither comment addressed the substance of this rule, they will not be considered in this document.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

As mentioned previously, this action requires an additional collection of information. The information collection requirements are discussed in the following section.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection requirements that are contained in this rule were approved by the Office of Management and Budget (OMB), under OMB No. 0581–0237. The information collection has been merged into OMB No. 0581–0189, Generic OMB Fruit Crops, which expires September 30, 2007.

In summary, the additional reporting requirements will enable the Committee to collect information from fresh prune handlers regarding the total quantity of early and late fresh prunes handled during the season, which was previously obtained from the inspection certificates issued by the Inspection Service. However, this source will no longer be available under the suspension of the handling regulations. The Committee will use used by the Committee to compile information that is essential for the collection of handler assessments, to provide production statistics to the industry, and to help ensure compliance with the order's provisions. In addition, the form will assist the Committee and USDA with oversight and planning.

E-Government Act Compliance

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (71 FR 26817, May 9, 2006) will tend to effectuate the declared policy of the Act.

The U.S. Trade Representative has reviewed this final rule and concurs with its issuance.

List of Subjects in 7 CFR Parts 924 and 944

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND IN UMATILLA COUNTY, OREGON

PART 944—FRUITS; IMPORT REGULATIONS

■ Accordingly, the interim final rule amending 7 CFR parts 924 and 944 which was published at 71 FR 26817 on May 9, 2006, is adopted as a final rule without change.

Dated: October 10, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17192 Filed 10–16–06; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 910 and 913

[No. 2006–19]

RIN 3069–AB32

Privacy Act and Freedom of Information Act; Implementation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule with request for comments.

SUMMARY: As part of a comprehensive review of agency practices related to the collection, use, and protection of personally identifiable information, the Federal Housing Finance Board

(Finance Board) is updating both its systems of records and implementing rule under the Privacy Act of 1974 (Privacy Act). This interim final rule revises the agency's Privacy Act regulation to include new sections concerning security of systems of records, use and collection of social security numbers, and employee responsibilities under the Privacy Act. Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing a notice concerning updates to the Finance Board's Privacy Act systems of records.

The Finance Board also is amending the fee schedule in its Freedom of Information Act (FOIA) regulation to take into account increased salary and operating costs. The Finance Board determines the amount of the fee it charges to duplicate records under the Privacy Act in accordance with the FOIA fee schedule.

DATES: The interim final rule will become effective on October 17, 2006. The Finance Board will accept comments on the interim final rule in writing on or before November 16, 2006.

Comments: Submit comments to the Finance Board only once, using any one of the following methods:

E-mail: comments@fhfb.gov.

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006, *Attention:* Public Comments.

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Board. Interim Final Rule: Privacy Act and Freedom of Information Act; Implementation. RIN Number 3069–AB32. Docket Number 2006–19.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/Default.aspx?Page=93&Top=93*.

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Privacy Act Official and Senior Attorney-Advisor, Office of General Counsel, *kayej@fhfb.gov* or 202–408–2505; or David A. Lee, Chief Privacy Officer and Deputy Director, Office of Management, *leed@fhfb.gov* or 202–408–2514. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

SUPPLEMENTARY INFORMATION:

I. Background and Analysis of the Interim Final Rule

In light of the recent theft of sensitive personal information from various federal agencies and in response to the Office of Management and Budget's memorandum (M–06–15 (May 22, 2006)) directing agencies to review privacy policies and processes, the Finance Board has undertaken a comprehensive review of agency practices related to the collection, use, and protection of personally identifiable information. As a result of that review, the Finance Board has enhanced the safeguards for sensitive information by adding two-factor authentication and data encryption to the agency's network infrastructure and is beginning to implement government-wide personal identity verification management standards that will result in issuance of new ID cards for all employees and contractors that may include full name, date of birth, image (photograph), fingerprints, organization affiliation (e.g., employee or contractor), organization/office of assignment, grade, e-mail address, United States citizenship status, and results of background investigation. The Finance Board also is updating both its Privacy Act systems of records and implementing rule.

The current Privacy Act rule, codified at 12 CFR part 913, was last revised in 2003. See Resolution Number 2003–08, published at 68 FR 39810 (July 3, 2003) (interim final rule), and Resolution Number 2003–25, published at 68 FR 59309 (Oct. 15, 2003) (final rule) (available electronically in the FOIA Reading Room on the Finance Board Web site at: *http://www.fhfb.gov/Default.aspx?Page=59&Top=4*). The substantive amendments this interim final rule makes include the addition of new sections concerning security of systems of records, use and collection of social security numbers, and employee responsibilities under the Privacy Act. These amendments are modeled after the U.S. Department of Justice Privacy Act implementing rule, and are intended to enhance the agency's ability to protect personally identifiable information.

Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing a notice updating the agency's Privacy Act systems of records to reflect the new office address, changes to certain records retention periods, and the shift in responsibility for records related to appointed Federal Home Loan Bank directors from the Office of the Chairman to the Office of Supervision. We are revising the system of records concerning Office of Inspector General (OIG) records to cover both audit and investigative files and, at the request of the OIG, adding several routine uses. We also are adding two new systems of records. The first covers examination work papers a Finance Board examiner uses to determine whether a Federal Home Loan Bank's Affordable Housing Program (AHP) complies with applicable laws and regulations. The second covers a Personal Identity Verification (PIV) Management System as a result of new, government-wide identification requirements for all federal employees.

The Finance Board also is amending the fee schedule in its FOIA regulation to take into account increased salary and operating costs. The Finance Board determines the amount of the fee it charges to duplicate records under the Privacy Act in accordance with the FOIA fee schedule. More specifically, the Finance Board is increasing the hourly search charge for clerical staff from $28.00 to $31.00, for supervisory/professional staff from $53.00 to $72.00, and for computer operators from $48.00 to $59.00. The hourly charge to review records increases from $53.00 to $72.00.

II. Notice and Public Participation

The Finance Board is promulgating these changes as an interim final rule because it is in the public interest to enhance the agency's ability to protect personally identifiable information. Accordingly, the Finance Board for good cause finds that the notice and publication requirements of the Administrative Procedure Act are unnecessary. See 5 U.S.C. 553(b)(3)(B). However, because this type of rulemaking generally requires notice and receipt of public comment, the Finance Board will accept written comments on the interim final rule on or before November 16, 2006.

III. Effective Date

For the reasons stated in part II above, the Finance Board for good cause finds that the interim final rule should become effective on October 17, 2006. See 5 U.S.C. 553(d)(3).

IV. Regulatory Flexibility Act

The Finance Board is adopting the amendments to parts 910 and 913 in the form of an interim final rule and not as a proposed rule. Therefore, the provisions of the Regulatory Flexibility Act do not apply. See 5 U.S.C. 601(2), 603(a).

V. Paperwork Reduction Act

The interim final rule does not contain any collections of information under the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq.* Consequently, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 910

Administrative practice and procedure, Archives and records, Confidential business information, Federal home loan banks, Freedom of information.

12 CFR Part 913

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

■ For the reasons stated in the preamble, the Finance Board revises 12 CFR parts 910 and 913 to read as follows:

PART 910—FREEDOM OF INFORMATION ACT REGULATION

■ 1. The authority citation for part 910 continues to read as follows:

Authority: 5 U.S.C. 552; 52 FR 10012 (Mar. 27, 1987).

■ 2. Revise the definition of the terms ''FOIA Officer'' in § 910.1 to read as follows:

§ 910.1 Definitions.

* * * * *

FOIA Officer means the Finance Board employee who is authorized to make determinations as provided in this part. The mailing address for the FOIA Officer is: Freedom of Information Act Office, Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006.

* * * * *

■ 3. Revise §§ 910.9(f)(2) and (g) to read as follows:

§ 910.9 Fees.

* * * * *

(f) * * *

(2) To pay fees and interest assessed under this section, a requester shall deliver to the Office of Management, located at the Federal Housing Finance Board, 1625 Eye Street NW., Washington DC 20006, a check or money order made payable to the ''Federal Housing Finance Board.''

* * * * *

(g) Fee schedule. The Finance Board shall assess fees in accordance with the following schedule:

Search:

Supervisory/Professional Staff—$72.00 per hour.

Clerical Staff—$31.00 per hour.

Computer Operator—$59.00 per hour.

Review—$72.00 per hour.

Duplication:

Photocopies—$.10 per page.

Diskettes—$.50 per diskette.

CD–ROMs—$1.00 per CD.

Transcription of audio tape—$4.50 per page.

Certification, seal and attestation—$5.00 per document.

Delivery:

Facsimile transmission (long distance)—long distance charges plus $.25 per page.

Facsimile transmission (local)—$.25 per call plus $.25 per page.

Express delivery service—actual cost.

PART 913—PRIVACY ACT REGULATION

■ 4. The authority citation for part 913 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 5. Revise the definition of the terms ''Privacy Act Official'' and ''system of records'' in § 913.1 to read as follows:

§ 913.1 Definitions.

* * * * *

Privacy Act Official means the Finance Board employee who is authorized to make determinations as provided in this part. The mailing address for the Privacy Act Official is: Privacy Act Office, Federal Housing Finance Board, 1625 Eye Street, NW., Washington DC 20006.

* * * * *

System of records means a group of records the Finance Board maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. You can find a description of the Finance Board's systems of records as part of the ''Privacy Act Compilation'' published by the **Federal Register**. You can access the ''Privacy Act Compilation'' in most large reference and university libraries or electronically at the Government Printing Office's Web site at *http://www.gpoaccess.gov/privacyact/index.html*. You also can request a copy of the Finance Board's systems of records from the Privacy Act Official.

* * * * *

■ 6. Revise § 913.2(a) to read as follows:

§ 913.2 Purpose and scope.

(a) This part 913 contains the rules the Finance Board follows under the Privacy Act. You should read these rules together with the Privacy Act, which provides additional information about records maintained on individuals. The rules apply to all records in systems of records the Finance Board maintains that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by the Finance Board. Whenever it is appropriate to do so, the Finance Board automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in part 910 of this chapter and this part 913. The Finance Board processes a request under both the Privacy Act and the FOIA so you will receive the maximum amount of information available to you by law.

* * * * *

■ 7. Revise § 913.3(e)(1) and (2)(i) to read as follows:

§ 913.3 How do I make a request under the Privacy Act?

* * * * *

(e) Verification of identity. * * *

(1) Verifying your own identity. You must state your full name, current address, and date and place of birth. In order to help identify and locate the records you request, you also may, at your option, include your social security number. If you make your request in person and your identity is not known to the Privacy Act Official, you must provide either 2 forms of identification with photographs, or 1 form of identification with a photograph and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary, or including the following statement just before the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(2) Verification of guardianship.

* * *

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address and date and place of birth, and, at your option, the social security number of the individual;

* * * * *

■ 8. Revise § 913.4(a) and (b) to read as follows:

§ 913.4 How will the Finance Board respond to your Privacy Act request?

(a) When will the Finance Board respond to my request? The Privacy Act Official generally will respond to you in writing within 10 working days of receipt of a request that meets the requirements of § 913.3. The Privacy Act Official may extend the response time in unusual circumstances, such as the need to consult with another agency about a record or to retrieve a record shipped offsite for storage. If you make your request in person, the Privacy Act Official may disclose records to you directly with a written record made of the grant of the request. If you are accompanied by another person, we will require your written authorization before discussing the records in the presence of the other person.

(b) What will the Finance Board's response include? The written response will include the Privacy Act Official's determination whether to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 913.6. If you requested access to records, the Privacy Act Official will make the records, if any, available to you. If you requested amendment or correction of a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record, in disclosable form, under this part.

* * * * *

■ 9. Revise § 913.5(e)(1) and (3) to read as follows:

§ 913.5 What can I do if I am dissatisfied with the Finance Board's response to my Privacy Act request?

* * * * *

(e) Statements of Disagreement. (1) What is a Statement of Disagreement? A Statement of Disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with the Finance Board's denial in whole or in part of your appeal requesting amendment or correction.

* * * * *

(3) What will the Finance Board do with my Statement of Disagreement? The Finance Board will place your Statement of Disagreement in the system(s) of records in which the disputed record is maintained. The Finance Board also may append a concise statement of its reason(s) for denying the request to amend or correct the record. The Finance Board will notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. We will provide a copy of your Statement of Disagreement and its explanation, if any, along with the record whenever the record is disclosed.

■ 10. Revise § 913.7(b)(1) introductory text to read as follows:

§ 913.7 Exemptions.

* * * * *

(b) Which records are exempt? (1) Office of Inspector General Audit and Investigative Records. Pursuant to 5 U.S.C. 552a(k)(2) and (5), a record contained in the system of records titled ''Office of Inspector General Audit and Investigative Records'' (FHFB–6) is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f), to the extent that the record consists of audit or investigatory material compiled:

* * * * *

■ 11. Add a new § 913.8 to read as follows:

§ 913.8 Security of systems of records.

(a) Controls. Each Finance Board office must establish administrative and physical controls to prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls should correspond to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) Limited access. Access to records is restricted only to individuals who require access in order to perform their official duties.

■ 12. Add a new § 913.9 to read as follows:

§ 913.9 Use and collection of social security numbers.

At least annually, the Privacy Act Official and/or Chief Privacy Officer will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their social security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their social security numbers:

(1) If providing a social security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a social security number; and

(3) The uses that will be made of the social security number.

■ 13. Add a new § 913.10 to read as follows:

§ 913.10 Employee responsibilities under the Privacy Act.

At least annually, the Privacy Act Official and/or Chief Privacy Officer will inform employees about the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, a Finance Board employee shall:

(a) Collect from individuals only information that is relevant and necessary to discharge the Finance Board's responsibilities.

(b) Collect information about an individual directly from that individual whenever practicable.

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Finance Board intends to use the information;

(3) The routine uses the Finance Board may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified

form of all disclosures of records by the Finance Board to persons, organizations, or agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit the Finance Board to maintain.

Dated: October 11, 2006.

By the Board of Directors of the Federal Housing Finance Board.

Ronald A. Rosenfeld,

Chairman.

[FR Doc. E6–17298 Filed 10–16–06; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23908; Airspace Docket No. 06–AEA–004]

Establishment of Class E Airspace; Wilkes Barre, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Wyoming Valley Medical Center, Wilkes Barre, Pennsylvania. The development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Wyoming Valley Medical Center, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Wyoming Valley Medical Center, Wilkes Barre, PA.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Wyoming Valley Medical Center, Wilkes Barre, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 13, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Wyoming Valley Medical Center, Wilkes Barre, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulation action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–04]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR part 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, WILKES BARRE, PA (New)

Wyoming Valley Medical Center
Point in Space Coordinates
(Lat 41°16′08″ N., long. 75°48′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of a Point in Space for the SIAP serving the Wyoming Valley Medical Center, Wilkes Barre, PA.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8681 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23895; Airspace Docket No. 06–AEA–01]

Establishment of Class E Airspace; Tunkhannock, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tyler Memorial Hospital, Tunkhannock, PA. Development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Tyler Memorial Hospital Heliport, Tunkhannock, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Tyler Memorial Hospital Heliport.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the Federal Register approves this

incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 2, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Tyler Memorial Hospital Heliport, Tunkhannock, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 2, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Tyler Memorial Hospital Heliport, Tunkhannock, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–01]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporated by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, TUNKHANNOCK, PA (New)

Tyler Memorial Hospital
Point in Space Coordinates
(Lat. 41°35′21″N., long. 75°58′57″W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of a Point in Space for the SIAP serving the Tyler Memorial Hospital Heliport.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8680 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23909; Airspace Docket No. 06–AEA–005]

Establishment of Class E Airspace; Wellsboro, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Nessmuk Helipad, Wellsboro, Pennsylvania. The development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Nessmuk Helipad, Wellsboro, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Nessmuk Helipad.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2006, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Nessmuk Helipad, Wellsboro, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 13, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Nessmuk Helipad, Wellsboro, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–05]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 15, 2006, and effective September 1, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, WELLSBORO, PA (New)

Nessmuk Helipad
Point in Space Coordinates
(Lat. 41°44′11″ N., long. 77°18′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of a Point in Space for the SIAP serving the Nessmuk Helipad, Wellsboro, PA.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8682 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23904; Airspace Docket No. 06–AEA–02]

Establishment of Class E Airspace: Jersey Shore Airport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Jersey Shore Airport, PA. Development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Jersey Shore Airport, Jersey Shore, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Jersey Shore Airport.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the **Federal Register** approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2006 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Jersey Shore Airport, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 31, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Jersey Shore Airport, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–02]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, JERSEY SHORE, PA (New)

Jersey Shore Airport
Point in Space Coordinates

(Lat. 41°11′54″ N., long. 77°14′22″ W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Jersey Shore Airport.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8683 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24318; Airspace Docket No. 06–AEA–007]

Establishment of Class E Airspace; Troy, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Hill Top Heliport, Troy, Pennsylvania. The development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Hill Top Heliport, Troy, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Hill Top Heliport.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 30, 2006 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Hill Top Heliport, Troy, PA, was published in the **Federal Register**.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 30, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9, dated September 1, 2006 and effective September 15, 2006 which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Hill Top Heliport, Troy, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–07]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, TROY, PA (New)

Hill Top Heliport
Point in Space Coordinates
(Lat. 41°47′34″ N., long. 76°48′14″ W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Hill Top Heliport, Troy, PA.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8684 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–23907; Airspace Docket No. 06–AEA–03]

Establishment of Class E Airspace; Ridgeway, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Ridgeway Landing Zone, Ridgeway, PA. Development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Ridgeway Landing Zone, Ridgeway, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Ridgeway Landing Zone.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation

Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2006 a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) for an RNAV, Helicopter Point in Space Approach to the Ridgeway Landing Zone, Ridgeway, PA, was published in the **Federal Register.** Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before may 13, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9P, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Ridgeway Landing Zone, Ridgeway, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5, RIDGEWAY, PA (New)

Ridgeway Landing Zone
Point in Space Coordinates
(Lat. 41°25′07″ N., long. 78°45′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Ridgeway Landing Zone, Ridgeway, PA.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8685 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2006–24317; Airspace Docket No. 06–AEA–006]

Establishment of Class E Airspace; Sayre, PA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Robert Packer Hospital, Sayre, Pennsylvania. The development of an Area Navigation (RNAV), Helicopter Point in Space Approach, for the Robert Packer Hospital, Sayre, PA, has made this action necessary. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain aircraft executing the approach to the Robert Packer Hospital.

DATES: *Effective Date:* 0901 UTC November 23, 2006. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, 1 Aviation Plaza, Jamaica, New York 11434–4809, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On March 30, 2006 a notice proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace extending upward from 700 feet Above Ground Level (AGL) from an RNAV, Helicopter Point in Space Approach to the Robert Packer Hospital, Sayre, PA, was published in the **Federal Register**. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA on or before May 30, 2006. No comments to the proposal were received. The rule is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83.

Class E airspace areas designations for airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9, dated September 1, 2006 and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be amended in the order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) provides controlled Class E airspace extending upward from 700 feet above the surface for aircraft conducting Instrument Flight Rules (IFR) operations at the Robert Packer Hospital, Sayre, PA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

[06–AEA–06]

PART 71—[AMENDED]

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9, Airspace Designations and Reporting Points, dated September 1, 2006 and effective September 15, 2006, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA PA E5, SAYRE, PA (New)

Robert Packer Hospital
Point in Space Coordinates
(Lat. 41°58′53″ N., long 76°32′06″ W.)

That airspace extending upward from 700 feet above the surface within a 6 mile radius of a Point in Space for the SIAP serving the Robert Packer Hospital, Sayre, PA.

* * * * *

Issued in Jamaica, New York on October 2, 2006.

Mark D. Ward,

Manager, FAA, Eastern Service Center.

[FR Doc. 06–8687 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–M

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Docket No. SSA 2006–0083]

RIN 0960–AG19

Continuing Disability Review Failure To Cooperate Process

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: We are amending our regulations to provide that we will suspend your disability benefits before we make a determination during a continuing disability review (CDR) under title II and title XVI of the Social Security Act (the Act) when you fail to comply with our request for necessary information. Should you remain non-compliant for a period of one year following your suspension, we will then terminate your disability benefits. Although our current title XVI regulations generally provide for the termination of payments after 12 months of suspension, we are amending our regulations by adding this policy to our title II regulations and by restating it in the title XVI CDR regulatory provisions.

DATES: These final rules are effective December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Don Harvey, Social Insurance Specialist, Office of Program Development and Research, Social Security Administration, 107Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 597–1026 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at *www.socialsecurity.gov/*.

SUPPLEMENTARY INFORMATION:

Electronic Version

The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*.

Statutory Background

Sections 221(i) and 1614(a)(3)(H)(ii)(I) of the Act and §§ 404.1589, and 416.989 of our regulations require that after we find that you are disabled, we evaluate your impairment(s) from time to time to determine if you remain disabled. We call this evaluation a continuing disability review (CDR). If the medical and other evidence shows that you are not disabled under the standards set out in sections 223(f) and 1614(a)(4) of the Act, we will end the payment of cash benefits and terminate your period of disability.

Section 1614(a)(3)(H)(iii) of the Act and § 416.987 of our regulations require that if you are eligible for payments as a child under title XVI by reason of disability, we redetermine that eligibility during the one-year period beginning on your 18th birthday, or, in lieu of a CDR, whenever we determine that your case is subject to such a review. We call this evaluation an age-18 redetermination. If the medical and other evidence shows that you are not disabled under the standards set out in section 1614(a)(3)(A)–(B) of the Act, we will end the payment of cash payments and terminate your period of disability.

Sections 223(f) and 1614(a)(4) of the Act provide that, in general, if you receive disability benefits under titles II and/or XVI of the Act, we may find that you are no longer disabled if substantial evidence shows that there has been medical improvement in your impairment or combination of impairments, and you are now able to do substantial gainful activity. Under title XVI, if you are a child (an individual under age 18), substantial evidence must show that there has been medical improvement in your impairment or combination of impairments, and the impairment(s) must no longer cause marked and severe functional limitations. We call this the medical improvement review standard (MIRS), and we apply it whenever we do a CDR for an adult or a child. The statute also provides, however, for several exceptions to the ''medical improvement'' requirement where we will not apply the MIRS. One of those exceptions to applying the MIRS is the situation where you fail, without good cause, to cooperate with us when we do a CDR.

Continuing Disability Review and Age-18 Redetermination Processes Under Our Current Regulations

When we begin a CDR or an age-18 redetermination, we notify you that we are reviewing your eligibility for disability benefits and explain why we are reviewing your eligibility; what standard will apply, either the MIRS in a CDR or the initial claims criteria in an age-18 redetermination; that our review could result in the termination of your benefits; and that you have the right to submit medical and other evidence for us to consider during the CDR or the age-18 redetermination. Before we determine whether you are still disabled, we develop a complete medical history covering at least the 12 months preceding the date that you

complete a report about your continuing disability status. If our review shows that we should stop your benefits, we notify you in writing and give you the opportunity to appeal. (See §§ 404.1589 and 416.989 of our regulations.) We explain when and how often we will do a CDR in §§ 404.1590 and 404.1591 of our title II regulations and in §§ 416.990 and 416.991 of our title XVI regulations. We explain when we will do an age-18 redetermination in § 416.987 of our title XVI regulations.

When we do a CDR or age-18 redetermination, §§ 404.1594(e)(2), 416.987(e)(3), 416.994(b)(4)(ii) and 416.994a(f)(2) of our regulations set out the general principle that is reflected in sections 223(f) and 1614(a)(4) of the Act; *i.e.*, that you have the responsibility to cooperate with us, or take any required action that we decide is necessary to allow us to complete the CDR or age-18 redetermination. If you do not cooperate with us, and you do not have good cause as defined in §§ 404.911 and 416.1411 of our regulations for not cooperating, we will find that your disability has ended.

We currently have no provision in our regulations that allows us to suspend your benefits under title II of the Act if you fail to cooperate with us when we request necessary information during a CDR. However, § 416.1322 of our title XVI regulations provides general authority that allows us to suspend your payments under title XVI of the Act, when you fail to cooperate with our requests for information, including during a CDR or age-18 redetermination.

When we suspend your title XVI payments for such failure to cooperate under § 416.1322, we follow § 416.714(b) of our regulations, which gives you thirty days from the date of our written request to comply with the request for information. We also follow § 416.1336 of our regulations, which provides that before we suspend, reduce, or terminate your title XVI payments, we will give you advance notice of our intent and provide you with appeal rights and payment continuation rights pending resolution of the appeal. When we terminate your title XVI payments due to continuous suspension of payments, we follow § 416.1335 of our regulations, which provides that we will terminate your eligibility for payments following 12 consecutive months of payment suspension.

Why Are We Revising Our Regulations?

We are continually exploring ways to improve the disability process. These revisions will allow us to make our rules consistent for all beneficiaries under both titles II and XVI, implement a more efficient CDR process, encourage beneficiaries to cooperate during the CDR or age-18 redetermination process, and make the process less burdensome.

As a result of the revisions, your failure to cooperate in the CDR process will result initially in a suspension rather than a termination of benefits based on a determination that you are no longer entitled to benefits. To have your benefits resumed, you will only have to contact your local Social Security office and provide the requested information and you will have up to 12 months to do so. Accordingly, during the 12 month period, you will not have to file an appeal in order to have your benefits resumed. In addition, you will not have to request, prepare for, and attend a hearing for your benefits to be resumed.

When Will We Start To Use These Final Rules?

We will start to use these final rules on their effective date. We will continue to use our prior rules until the effective date of these final rules. When these final rules become effective, we will apply them to CDRs and age-18 redeterminations that we initiate on or after the effective date.

What Revisions Are We Making?

We are revising §§ 404.1587 and 404.1596 of our title II regulations and adding a new § 416.992 to our title XVI regulations. With respect to § 404.1587, we are revising the title to reflect that your benefits may be terminated as well as suspended. In addition, we are designating the current paragraph as paragraph (a) and adding a heading to it. We are also adding new paragraphs (b) and (c). Under the new § 404.1587(b), we will suspend your benefits during a CDR when you do not cooperate with us by failing, without good cause, to comply with our written request for any necessary information. If you subsequently give us the information that we requested, we will reinstate your benefits and continue with the CDR process. We will reinstate your benefits for any previous month for which they are otherwise payable.

The regulatory language in this final rule has been changed from the language that appeared in the notice of proposed rulemaking (NPRM), (70 FR at 72418). We have reordered the phrases in final § 404.1587(b) to state that ''we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.'' This was done in response to a public comment that the regulatory language in the proposed rules could be misinterpreted to mean that we will not reinstate benefits until we complete the CDR process. Accordingly, the phrase was restructured for clarity in § 404.1587(b) and also in the parallel language in new §§ 404.1596(d) and 416.992.

Under the new § 404.1587(c), we will terminate your benefits following 12 consecutive months of benefit suspension when you fail to comply with our written request for any necessary information made during a CDR. This termination will be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have benefit continuation rights.

Under the revised § 404.1596, the title will reflect that your benefits may be terminated as well as suspended. We are also removing current paragraphs (c)(1) and (c)(2) and adding new paragraphs (d) and (e) to explain that we will not make a medical determination when you do not cooperate with us by failing to comply with our written request for any necessary information. We will suspend your benefits only after we give you advance notice as described in § 404.1595. The advance notice will tell you what you need to do so that your benefits are not suspended as outlined in § 404.1595(b)(3) of our regulations.

In the new § 404.1596(d), we are adding language to explain that if we suspend your benefits because you fail to cooperate and you subsequently give us the information that we requested, we will reinstate your benefits and continue with the CDR process. We will reinstate your benefits for any previous months for which they are otherwise payable. As noted above, as a result of a public comment, we have reordered the phrases in the final regulation § 404.1596(d) to make them consistent with § 404.1587(b).

With respect to the new § 404.1596(e), we explain that if we suspend your benefits because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we will terminate your benefits. The termination will be effective with the start of the 13th month after your benefits were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have benefit continuation rights.

We are adding a new § 416.992 to explain that we will suspend your payments before we make a determination regarding your continuing eligibility for disability payments if you fail to comply with our

request for information for your CDR or age-18 redetermination. We will suspend your payments only after we give you advance notice as described in § 416.995. As outlined in § 416.1336 of our regulations, the advance notice will tell you what you need to do so that your payments are not suspended. If we suspend your payments because you fail to cooperate and you subsequently give us the information that we requested, we will reinstate your payments and continue with the CDR or age-18 redetermination process. We will reinstate your payments for any previous month for which they are otherwise payable. If we suspend your payments because you do not give us the information that we need and you fail to respond during the subsequent 12-month period, we will terminate your payments. The termination will be effective with the start of the 13th month after your payments were stopped because you failed to cooperate. You will have the right to appeal the termination, but you will not have payment continuation rights.

In response to a public comment, the regulatory language in this final rule has been changed from the language that appeared in the proposed rules. We have revised the language in the final regulation § 416.992 to reflect that payments will only be suspended if good cause has not been established. This is consistent with the language in the final regulation § 404.1587(b). We have also reordered the phrases in final regulation § 416.992 to make them consistent with §§ 404.1587(b) and 404.1596(d).

Public Comments

We published these regulatory provisions in the **Federal Register** as a NPRM on December 5, 2005 (70 FR 72416). We provided the public with a 60-day comment period. We received comments from 10 individuals and 11 organizations. Because some of the comments submitted were detailed, we have tried to summarize or paraphrase the views presented in these comments accurately and to respond to the significant issues raised in the comments that were within the scope of the proposed rules.

Comment: Several commenters stated that they disagreed with the proposed rule changes because of the potential for problems with the delivery of mail. The commenters said that we should be mindful of the widespread deficiencies in mail delivery.

Response: We will exhaust all efforts to locate the beneficiary/payee and follow-up on all requests for information before deciding to suspend benefits. To ensure that we have made every reasonable effort to contact the beneficiary/payee, we will attempt to secure the most current address from the Post Office, financial institutions, etc. If we suspend an individual's benefits he or she will only have to contact his or her local Social Security office and provide the requested information within the 12 month period to have his or her benefits resumed.

Comment: Along the same lines, one commenter related an incident in which her benefits had been terminated because the Postal Service was unable to locate her, despite residing at the same address for 13 years. The commenter suggested that all correspondences relating to requests for information should be sent via certified mail.

Response: We did not need to make any changes in these final rules as a result of this comment. If a beneficiary fails to respond to our initial notice, our procedures require that we send a certified letter to a beneficiary's address of record prior to initiating a suspension action.

Comment: One commenter expressed a view that individuals who have developmental or mental health diagnoses may not be able to read and understand the information that we send to them. The commenter said that this proposal may impose a hardship on these individuals and go against the intent of the Act.

Response: In all situations, we are sensitive to circumstances in which an individual, including those individuals who have developmental or mental health diagnoses, may require assistance to comply with our requests. We will consider the individual's impairment and use all available resources to obtain needed information, and if necessary, determine whether a representative payee or change of representative payee is needed.

Comment: Several commenters stated that they did not support our proposed rule changes because of the potential for misunderstandings about information being requested and vaguely worded notices. The commenters also stated that they did not support our proposed rule changes because of the potential for representative payees not fulfilling their reporting responsibilities. The commenters urged us to ensure that policies are in place to make certain that individuals continue to receive the benefits to which they are entitled prior to implementation of these final regulations.

Response: As we stated above, we are sensitive to situations in which an individual may require assistance to comply with our requests. When appropriate, we will consider the beneficiary's capability and/or consider the need for a new payee. Before suspending benefits, we will send a notice that clearly explains that benefits will be suspended if the beneficiary/payee does not provide the necessary information. If we suspend an individual's benefits he or she will only have to contact his or her local Social Security office and provide the requested information within the 12 month period to have his or her benefits resumed.

Comment: One commenter recommended that we send requests for information to the representative payee, an automatic reinstatement provision be provided when the beneficiary/payee provides the necessary information, and include a place on the form for the individual to state they do not understand a question or need assistance in filling out the form.

Response: These final rules do not change our regulations on the use of representative payees. If a beneficiary has a representative payee, it is our policy to send all notices to the payee. Additionally, as soon as the beneficiary/payee provides the requested information, benefits will be reinstated, including any previous month for which they are otherwise payable. The beneficiary/payee will not have to request that benefits be reinstated. The form that an individual must complete during a CDR includes a remarks section where the individual can indicate that he or she does not understand a question or needs assistance completing the form. In addition, the letter that advises the individual that a CDR is being done also advises the individual that he or she may contact us at any time if he or she has any questions or requires assistance.

Comment: One commenter applauded our decision to suspend rather than terminate benefits when a beneficiary fails to cooperate during a CDR and urged that we continue the existing policy that benefits be continued when despite a lack of cooperation the evidence establishes continued eligibility.

Response: We are not changing our existing policy that benefits be continued when despite a lack of cooperation, evidence establishes continued eligibility.

Comment: Several commenters stated that the proposed language of §§ 404.1587, 404.1596 and 416.992, ''we will continue with the CDR process and reinstate your benefits for any month for which they are otherwise payable'' should be reordered to make clear that benefits will be restored immediately

upon the individual's cooperation with us. The commenters further stated that the ''without good cause'' language that appeared in §§ 404.1587 and 404.1596 in the proposed rules did not appear in the regulatory language in § 416.992 in the proposed rules and should be corrected in the final regulations. The commenters also suggested that the regulations should spell out what constitutes ''good cause'' in the situation where a person fails to cooperate with a CDR or an age-18 redetermination.

Response: We agree that the order of the language that appeared in the regulatory section of the proposed rules might be misread. We have reordered the phrases in §§ 404.1587, 404.1596, and 416.992 by changing the language to state that ''when we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.'' Also, we have rewritten § 416.992 to include the reference to the regulatory language ''without good cause'' to make it consistent with §§ 404.1587 and 404.1596, since it was inadvertently omitted. For clarity when referring to ''good cause,'' we are adding a parenthetical to the final rules referencing the ''good cause'' citations (§§ 404.911 and 416.1411) in the regulatory text of §§ 404.1587(b), 404.1596(d), and 416.992, as appropriate.

Comment: The same commenters also stated that the regulations should include specific statements that we will meet with the individual on the day he or she first visits the Social Security office to report that he or she did not receive the monthly check. Also, the commenters stated that the final regulations should note that we will assist those who need extra help and that such provision, among others, is required by our obligation under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).

Response: We have not rewritten these sections to include specific statements that we will meet with the individuals on the day he or she first visits a Social Security office or to assist individuals who need extra help because it is already our policy to do so. Further, we comply with all applicable laws relating to our programs to ensure maximum accessibility of all our programs and proceedings. If a beneficiary contacts one of our field offices with the necessary information, the field office will meet with them and take action to reinstate their benefits.

Comment: One commenter suggested that if benefits are suspended for non-cooperation, benefits should be reinstated only if the information subsequently provided demonstrates that the beneficiary is still disabled.

Response: We did not adopt this comment. The purpose of these final rule changes is to implement a more efficient CDR process and to encourage beneficiaries to cooperate during the CDR process. Accordingly, if the beneficiary provides us with the necessary information or evidence requested, benefits will be reinstated. We will then continue with the CDR process.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under E.O. 12866, as amended by E.O. 13258. Thus, they were reviewed by OMB.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final regulations impose no reporting or recordkeeping requirements requiring OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 11, 2006.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations, as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), (221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); section 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Section 404.1587 is revised to read as follows:

§ 404.1587 Circumstances under which we may suspend and terminate your benefits before we make a determination.

(a) *We will suspend your benefits if you are not disabled.* We will suspend your benefits if all of the information we have clearly shows that you are not disabled and we will be unable to complete a determination soon enough to prevent us from paying you more monthly benefits than you are entitled to. This may occur when you are blind as defined in the law and age 55 or older and you have returned to work similar to work you previously performed.

(b) *We will suspend your benefits if you fail to comply with our request for necessary information.* We will suspend your benefits effective with the month in which it is determined in accordance with § 404.1596(b)(2)(i) that your disability benefits should stop due to your failure, without good cause (see § 404.911), to comply with our request for necessary information. When we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.

(c) *We will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with § 404.1596(b)(2)(i). We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (b) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

■ 3. Section 404.1596 is amended by revising the heading, removing paragraphs (c)(1) and (c)(2), redesignating paragraphs (c)(3) and (c)(4) as paragraphs (c)(1) and (c)(2), and

adding new paragraphs (d) and (e) to read as follows:

§ 404.1596 Circumstances under which we may suspend and terminate your benefits before we make a determination.

* * * * *

(d) *When the suspension is effective.* We will suspend your benefits effective with the month in which it is determined in accordance with paragraph (b)(2)(i) of this section that your disability benefits should stop due to your failure, without good cause (see § 404.911), to comply with our request for necessary information for your continuing disability review. This review is to determine whether or not you continue to meet the disability requirements of the law. When we have received the information, we will reinstate your benefits for any previous month for which they are otherwise payable, and continue with the CDR process.

(e) *When we will terminate your benefits.* We will terminate your benefits following 12 consecutive months of benefit suspension because you did not comply with our request for information in accordance with paragraph (b)(2)(i) of this section. We will count the 12-month suspension period from the start of the first month that you stopped receiving benefits (see paragraph (d) of this section). This termination is effective with the start of the 13th month after the suspension began because you failed to cooperate.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 4. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), (d)(1) and (p), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), (d)(1), and (p), and 1383(b); secs. 4(c) and (5), 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note and 1382h note).

■ 5. Section 416.992 is added to read as follows:

§ 416.992 What happens if you fail to comply with our request for information.

We will suspend your payments before we make a determination regarding your continued eligibility for disability payments if you fail to comply, without good cause (see § 416.1411), with our request for information for your continuing disability review or age-18 redetermination. The suspension is effective with the month in which it is determined in accordance with § 416.1322 that your eligibility for disability payments has ended due to your failure to comply with our request for necessary information. When we have received the information, we will reinstate your payments for any previous month for which they are otherwise payable, and continue with the CDR or age-18 redetermination process. We will terminate your eligibility for payments following 12 consecutive months of payment suspension as discussed in § 416.1335.

[FR Doc. E6–17181 Filed 10–16–06; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1310

[Docket No. DEA–254F]

RIN 1117–AA90

Control of Sodium Permanganate as a List II Chemical

AGENCY: Drug Enforcement Administration (DEA), U.S. Department of Justice.

ACTION: Final rule.

SUMMARY: On March 1, 2005, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (70 FR 9889) which proposed the addition of sodium permanganate as a List II chemical because of its direct substitutability for potassium permanganate (a List II chemical) in the illicit production of cocaine.

This rulemaking finalizes control of sodium permanganate. As a List II chemical, handlers of sodium permanganate shall be subject to Controlled Substances Act (CSA) chemical regulatory controls including recordkeeping, reporting, and import/export requirements. DEA has determined that these controls are necessary to prevent the diversion of this chemical to cocaine laboratories.

This rulemaking is also establishing a cumulative threshold of 55 kilograms and 500 kilograms (respectively) for domestic and international transactions. As such, all transactions which meet or exceed these quantities (in a calendar month) shall be considered regulated transactions, subject to recordkeeping, reporting and/or import/export notification requirements. Additionally, as a result of this rulemaking, chemical mixtures having greater than 15 percent sodium permanganate shall be subject to CSA chemical regulatory control provisions.

All handlers of the List II chemical sodium permanganate shall also be subject to the applicable civil and criminal penalty provisions found in 21 U.S.C. 841, 842, 843, 959 and 960.

DATES: *Effective Date:* December 18, 2006.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537 at (202) 307–7183.

SUPPLEMENTARY INFORMATION: The CSA and its implementing regulations, specifically 21 U.S.C. 802(35) and 21 CFR 1310.02(c), provide the Attorney General with the authority to specify, by regulation, additional chemicals as ''List II'' chemicals if they are used in the manufacture of a controlled substance in violation of the CSA. This authority has been delegated to the Administrator, Drug Enforcement Administration (DEA) by 28 CFR 0.100 and redelegated to the Deputy Administrator under 28 CFR 0.104 (Subpart R) Appendix section 12.

On March 1, 2005, the DEA published a Notice of Proposed Rulemaking (70 FR 9889) which proposed the addition of sodium permanganate as a List II chemical because of its direct substitutability for potassium permanganate (a List II chemical) in the illicit production of cocaine. Additionally, the Notice of Public Rule Making (NPRM) proposed that a threshold of 55 kilograms and 500 kilograms be established (respectively) for domestic and international transactions.

DEA also proposed that chemical mixtures (containing sodium permanganate) having less than or equal to 15 percent sodium permanganate shall qualify for automatic exemption from CSA chemical regulatory controls pursuant to 21 CFR Part 1310. Since DEA recognizes that the concentration limit exemption criteria cannot identify all mixtures that should receive exemption status, DEA has implemented an application process to exempt additional mixtures (21 CFR 1310.13). This application process was finalized in a Final Rule published in the **Federal Register** May 1, 2003 (68 FR 23195). Under the application process, manufacturers may submit an application for exemption for those mixtures that do not qualify for automatic exemption. Exemption status can be granted if DEA determines that

the mixture is formulated in such a way that it cannot be easily used in the illicit production of a controlled substance and the listed chemical cannot be readily recovered (*i.e.*, it meets the conditions in 21 U.S.C. 802(39)(A)(v)). An application may be for a single or a multiple number of formulations.

Sodium Permanganate Industry and Legitimate Uses

Sodium permanganate is an inorganic oxidant that is a direct substitute for potassium permanganate. Due to its high solubility in water, sodium permanganate has distinct advantages over potassium permanganate in many industrial applications. It is becoming widely used for industrial purposes, including (1) Printed circuit board production, (2) pharmaceutical and chemical synthesis, (3) soil and groundwater remediation, (4) metal cleaning formulations, (5) acid mine drainage and (6) hydrogen sulfide odor control.

DEA has identified only one domestic producer of sodium permanganate. However, sodium permanganate is also imported into the United States (U.S.) and there are at least three other major suppliers of sodium permanganate in the U.S.

The U.S. firm that manufactures sodium permanganate distributes it through 15–20 major authorized distributors and more than 100 branch distributors. This U.S. supplier has advised DEA that it is aware of ''one [sodium permanganate] manufacturer in Germany, more than one manufacturer in China and at least nine suppliers in other countries.''

Reason for This Control Action

Sodium permanganate is directly substitutable for potassium permanganate, an important List II chemical used illicitly in the production of cocaine. Potassium permanganate is widely used as an oxidizing agent for removing impurities from coca base in the illicit production of cocaine. Potassium permanganate is utilized because it produces an aesthetically pleasing, white, crystalline form of cocaine hydrochloride, which is easily marketed.

Because of its importance in cocaine production, potassium permanganate has been the target of international cooperative efforts to monitor potassium permanganate shipments and prevent its diversion. This effort remains an international priority involving the competent authorities of 22 countries.

Recently, the world's largest producer of potassium permanganate (a U.S. company) informed DEA of its recent conversion of production processes away from potassium permanganate and toward the increased production and distribution of sodium permanganate. Because of sodium permanganate's direct substitutability for potassium permanganate, this company has agreed with DEA concerns regarding the potential illicit use of sodium permanganate as a direct substitute for potassium permanganate in cocaine processing. This producer advised DEA that it would welcome the control of sodium permanganate as a listed chemical.

Even though production of sodium permanganate has historically been limited, sodium permanganate has been seized by law enforcement at illicit cocaine laboratories in Latin America. As reported in the 2001 and 2002 Statistical Summary on Drugs, compiled by the Organization of American States (OAS), and the Inter-American Drug Abuse Control Commission (CICAD), the Government of Colombia (as reported by the Colombian Ministerio de Justicia y del Derecho, Direccion Nacional de Estupefacientes) reported the seizure of 1,400 kilograms of sodium permanganate in 1997, 236 kilograms in 1998 and 404 kilograms in 1999.

Because of its direct substitutability for potassium permanganate and increased production, DEA sees the urgent need to regulate sodium permanganate as a List II chemical to prevent its diversion to cocaine laboratories. Hence, this rulemaking subjects sodium permanganate to the same CSA regulatory controls which have been put forth for potassium permanganate. As such, sodium permanganate shall be subject to List II chemical controls, including recordkeeping, reporting, and import/export requirements as specified in 21 CFR Parts 1310 and 1313.

Comments Received in Response to the NPRM

In response to the March 1, 2005, NPRM, DEA received four comments. One commenter simply stated that they supported the control of sodium permanganate as a List II chemical.

Another commenter stated that they disagreed with the exemption of chemical mixtures containing less than 15 percent sodium permanganate, but did not provide any supportive reason for their opposition.

Two comments addressed the issue of the establishment of a domestic threshold of 55 kilograms for domestic transactions. One commenter stated that the threshold was too high and instead suggested that DEA establish a domestic threshold of 5 kilograms. Another commenter stated that they believed the 55 kilogram threshold was too low, and stated that they believed it would increase the recordkeeping burden on wastewater treatment facilities.

DEA believes, however, that the threshold of 55 kilograms for domestic transactions will not impact these wastewater treatment facilities because these facilities are end-users. As such, they are not required to maintain records and therefore do not incur any regulatory burden. Their suppliers, however, must maintain records of all distributions greater than 55 kilograms.

Furthermore, DEA believes that the 55 kilogram threshold for domestic transactions is appropriate, since this is the threshold that currently exists for potassium permanganate (which is the direct substitute for sodium permanganate in these industries.)

One comment was received from the sole U.S. producer of sodium permanganate. The company stated that it supports DEA's proposal to control sodium permanganate as a List II chemical. The company further stated that controls on sodium permanganate should be exactly the same as the controls which currently exist on potassium permanganate. DEA agrees.

What This Final Rule Does and Regulatory Controls That Shall Apply to This Chemical

After careful consideration of all comments, DEA has determined that all control provisions as proposed in the March 1, 2005, NPRM (70 FR 9889) shall become final. As such, the exact regulatory controls which currently apply to potassium permanganate shall be implemented for sodium permanganate effective December 18, 2006.

As a List II chemical, sodium permanganate shall be subject to the chemical regulatory control provisions and civil and criminal sanctions of the CSA. As such, recordkeeping, reporting and import/export notification requirements (as described in 21 CFR Parts 1310 and 1313) shall apply. As a List II chemical, manufacturers, distributors, importers and exporters of sodium permanganate will not be required to register with DEA pursuant to the provisions of 21 CFR Part 1309.

Handlers of this chemical shall be required to maintain records and meet CSA import/export notification requirements for ''regulated transactions'' involving sodium permanganate. The CSA (21 U.S.C. 802(39)) defines the term ''regulated transaction'' as a ''distribution, receipt, sale, importation, or exportation of, or an international transaction involving

the shipment of, a listed chemical, or if the Attorney General establishes a threshold amount for a specific listed chemical,'' a transaction involving a threshold amount. The CSA, therefore, provides the Attorney General with authority to establish a threshold amount for listed chemicals if the Attorney General so elects.

DEA is establishing a threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions. Consequently, all transactions which meet or exceed these threshold quantities shall be considered regulated transactions and be subject to recordkeeping, reporting and import/export notification requirements of the CSA.

Regulatory Requirements for Persons Handling Regulated Transactions of Sodium Permanganate

Records and Reports. The CSA (21 U.S.C. 830) requires certain records to be kept and reports to be made involving listed chemicals. Regulations describing recordkeeping and reporting requirements are set forth in 21 CFR Part 1310. A record must be made and maintained for two years after the date of a regulated transaction involving a List II chemical. Only a distribution, receipt, sale, importation, or exportation of a regulated mixture at or above the established threshold (*e.g.* 55 kilograms for domestic transactions and 500 kilograms for international transactions) is a regulated transaction (21 CFR 1300.02(b)(28)).

Each regulated bulk manufacturer of a regulated mixture shall submit manufacturing, inventory and use data on an annual basis (21 CFR 1310.05(d)). Bulk manufacturers producing the mixture solely for internal consumption, *e.g.*, formulating a non-regulated mixture, are not required to submit this information. Existing standard industry reports containing the required information are acceptable, provided the information is readily retrievable from the report.

21 CFR 1310.05 requires that each regulated person shall report to DEA any regulated transaction involving an extraordinary quantity, an uncommon method of payment or delivery, or any other circumstance that causes the regulated person to believe that the listed chemical will be used in violation of the CSA.

Imports/Exports. All import/exports and brokered transactions of regulated mixtures shall comply with the CSA (21 U.S.C. 957 and 971). Regulations for importation and exportation of listed chemicals are described in 21 CFR Part 1313.

Administrative Inspection. Places, including factories, warehouses, or other establishments and conveyances, where regulated persons may lawfully hold, manufacture, or distribute, dispense, administer, or otherwise dispose of a listed chemical or where records relating to those activities are maintained, are controlled premises as defined in 21 CFR 1316.02(c). The CSA (21 U.S.C. 880) allows for administrative inspections of these controlled premises as provided in 21 CFR Part 1316, Subpart A.

Specific Requirements That Will Apply to Regulated Chemical Mixtures Containing Sodium Permanganate

Effective December 18, 2006, a chemical mixture that is regulated because it contains greater than 15 percent sodium permanganate will be treated as a List II chemical. Transactions that meet or exceed the cumulative monthly threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions shall be regulated transactions.

The regulatory requirements for regulated chemical mixtures containing List II chemicals are the same as for regulated chemical mixtures containing List I chemicals, except that registration requirements do not apply. Therefore, the same requirements for records and reports, imports/exports (except that pertaining to 21 U.S.C. 957), and administrative inspection, as outlined above, apply to handlers of List II regulated chemical mixtures.

Persons who submit an application for exemption (21 CFR 1310.13) and whose application is pending or subsequently denied by DEA shall be required to comply with all chemical control requirements, including recordkeeping and reporting, effective December 18, 2006. Therefore, all transactions of the chemical mixture would be regulated, if above threshold, while an application for exemption is pending or awaiting correction. This is necessary because not regulating these transactions could result in increased diversion of chemicals desirable to cocaine traffickers.

Potential Impact of Regulation Upon Industry

In an effort to better estimate the potential impact of this action, DEA conducted an analysis of various data sources relating to the manufacture, distribution, and use of the permanganates. This included an analysis of current chemical producers and marketing directories (to identify companies listing themselves as sources of these chemicals).

As previously stated in the NPRM, the DEA has identified only a limited number of companies which distribute sodium permanganate which has been either domestically produced or imported. While sodium permanganate has industrial uses, DEA has not been able to identify any 'household' uses for this chemical. Therefore, the number of firms that are likely to be affected by this proposed regulation is relatively small.

This final rulemaking is not considered to have an impact upon a substantial number of firms, given the limited distribution of this chemical. Additionally, it is likely that the CSA recordkeeping requirements are already being met as part of normal business practice. Since sodium permanganate is being added as a List II chemical there is no registration requirement. Additionally, DEA is establishing a cumulative threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions. Therefore, small transactions involving research quantities of sodium permanganate will not be subject to regulatory requirements.

Regulatory Certifications

Regulatory Flexibility Act

The Deputy Administrator hereby certifies that this rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. As noted previously, this rulemaking is not considered to have an impact upon a substantial number of firms, given the limited distribution of this chemical. Further, this impact is being limited by the fact that DEA is adding sodium permanganate as a List II chemical, rather than the more stringent requirements of a List I chemical. Additionally, it is likely that the CSA recordkeeping requirements are already being met as part of normal business practice. The cumulative threshold of 55 kilograms for domestic transactions and 500 kilograms for international transactions established here would remove from regulatory control small transactions involving research quantities of sodium permanganate.

Executive Order 12866

The Deputy Administrator further certifies that this rulemaking has been drafted in accordance with the

principles in Executive Order 12866 section 1(b). It has been determined that this is a ''significant regulatory action''. Therefore, this action has been reviewed by the Office of Management and Budget. DEA has identified only one U.S. firm which manufactures sodium permanganate. This firm supports control of sodium permanganate as a List II chemical.

Paperwork Reduction Act

This rulemaking adds sodium permanganate as a List II chemical under the CSA. As a List II chemical, there is no requirement of registration to handle this chemical. Further, as most persons who handle this product are end-users and, as such, are not required to maintain records or file reports, there is no impact on these persons.

Handlers of sodium permanganate that distribute above threshold quantities are required to maintain records. Normal business records are deemed adequate if they contain the information required in 21 CFR 1310.06. As normal business records meet DEA's regulatory requirements, the maintenance of these records does not fall under the parameters of the Paperwork Reduction Act. Further, persons importing and exporting this List II chemical in quantities of greater than 500 kilograms, cumulatively, per month, must provide DEA with advance notification of these transactions. As DEA does not have any information on which to base an estimate of the impact of this new reporting requirement for persons importing or exporting sodium permanganate in quantities greater than 500 kilograms, cumulatively, per month, DEA will adjust the burden related to this information collection (OMB control number 1117–0023 ''Import/Export Declaration: Precursor and Essential Chemicals'') upon its renewal.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132

This rulemaking does not preempt or modify any provision of State law; nor does it impose enforcement responsibilities on any State; nor does it diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $115,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $114,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1310

Drug Traffic Control, List I and List II chemicals, Reporting and Recordkeeping Requirements.

■ For reasons set out above, 21 CFR part 1310 is amended as follows:

PART 1310—RECORDS AND REPORTS OF LISTED CHEMICALS AND CERTAIN MACHINES

■ 1. The authority citation for part 1310 continues to read as follows:

Authority: 21 U.S.C. 802, 830, 871(b), 890.

■ 2. § 1310.02 is amended by adding a new paragraph (b)(12) to read as follows:

§ 1310.02 Substances Covered.

* * * * *

(b) * * *

(12) Sodium Permanganate 6588

* * * * *

■ 3. § 1310.04 is amended by adding new paragraphs (f)(2)(i)(H) and (f)(2)(ii)((J) to read as follows:

§ 1310.04 Maintenance of records.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(H) Sodium permanganate ..... N/A ..... 500 kilograms

* * * * *

(ii) * * *

(J) Sodium permanganate ..... N/A ..... 55 kilograms

* * * * *

■ 4. § 1310.12 is amended by adding an entry for ''sodium permanganate'' to the table in paragraph (c) to read as follows:

§ 1310.12 Exempt chemical mixtures.

* * * * *

(c) * * *

TABLE OF CONCENTRATION LIMITS

	DEA chemical code No.	Concentration (percent)	Special conditions
* * * * * * *			
List II Chemicals.			
* * * * * * *			
Sodium Permanganate	6588	15% by Weight.	
* * * * * * *			

* * * * *

Dated: September 29, 2006.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. E6–16990 Filed 10–16–06; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9274]

RIN 1545–BB16

Disclosure of Return Information by Certain Officers and Employees for Investigative Purposes; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document corrects final regulations (TD 9274) that were published in the **Federal Register** on Tuesday, July 11, 2006 (71 FR 38985). The document contains final regulations relating to the disclosure of return information pursuant to section 6103(k)(6) of the Internal Revenue Code.

DATES: This correcting amendment is effective October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, (202) 622–4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of final regulations (TD 9274) that is the subject of these corrections is under section 6103(k)(6) of the Internal Revenue Code.

Need for Correction

As published, TD 9274 contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR Part 301 is corrected by making the following correcting amendments:

■ **Paragraph 1.** On page 38985, column 1, in the preamble, under the caption ''DATES'', second line, the language ''are effective July 11, 2006.'' is corrected to read ''are effective July 6, 2006.''.

■ **Par. 2.** On page 38986, column 2, in the preamble, under the paragraph heading ''Special Analyses'', sixth line from the top of the column, the language ''and because the regulation does not'' is corrected to read ''and because the regulations do not''.

PART 301—PROCEDURE AND ADMINISTRATION

■ **Par. 3.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 4.** Section 301.6103(k)(6)–1(e) is revised to read as follows:

§ 301.6103(k)(6)–1 Disclosure of return information by certain officers and employees for investigative purposes.

* * * * *

(e) *Effective date.* This section is applicable on July 6, 2006.

Guy R. Traynor,

Chief, Publications and Regulations Branch, Legal Processing Division,Associate Chief Counsel, (Procedure and Administration).

[FR Doc. E6–17135 Filed 10–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9291]

RIN 1545–BB97

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Prior to Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final Regulations.

SUMMARY: This document contains final regulations amending the regulations relating to a taxpayer's right to a hearing before or, in limited cases, after levy under section 6330 of the Internal Revenue Code of 1986. The final regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The final regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) intends to levy.

DATES: *Effective Date:* These regulations are effective on November 16, 2006.

Applicability Date: These regulations apply to requests for CDP or equivalent hearings on or after November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Laurence K. Williams, 202–622–3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6330 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) before or, in limited cases, after levy. Final regulations (TD 8980) were published on January 18, 2002, in the **Federal Register** (67 FR 2549) (the 2002 final regulations). The 2002 final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685)(RRA 1998), including the addition of section 6330 to the Internal Revenue Code.

Section 3401 of RRA 1998 also added section 6320 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing after the filing of a notice of Federal tax lien (NFTL). A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8979) under section 6320 were published in the **Federal Register** (67 FR 2558) along with the 2002 final regulations under section 6330.

On September 16, 2005, the IRS and the Treasury Department published in the **Federal Register** (70 FR 54687) a notice of proposed rulemaking and notice of public hearing (REG–150091–02). The IRS received one set of written comments responding to the notice of proposed rulemaking. Because no one requested to speak at the public hearing, the hearing was cancelled. After considering each of the comments, the proposed regulations are adopted as amended by this Treasury decision.

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (the PPA), was enacted. Section 855 of the PPA amended section 6330(d) of the Internal Revenue Code to withdraw judicial review of CDP notices of determination from United States district court jurisdiction, leaving review solely in the United States Tax Court. This amendment to section 6330(d), effective for notices of determination issued on or after October 17, 2006, requires the removal of references to district court review in the 2002 final regulations.

This Treasury decision removes those references.

The IRS and the Treasury Department have determined that a notice of proposed rulemaking and solicitation of public comments are not required to amend the regulations to implement the modification to section 6330(d). These amendments are made solely to conform the regulations to a statutory change enacted by Congress. Because the amendments do not involve any exercise of discretion or interpretation, the notice and public comment procedures are unnecessary.

The comments and changes to the proposed regulations, and the amendments required by the Congressional modification to section 6330(d), are discussed below.

Summary of Comments and Explanation of Changes

The comments suggested that the IRS be required to contact taxpayers who timely file an incomplete request for CDP hearing to give them the opportunity to perfect the request within a reasonable time period and further recommended that such contact be in writing and identify the infirmity requiring perfection. The comments also recommended that the final regulations establish a specific time period during which taxpayers may, by right, amend or perfect their previously-filed yet incomplete CDP hearing request. The request, according to the comments, should be considered timely if it is perfected within the applicable time period.

Currently, the practice of the IRS is to contact taxpayers whose hearing requests fail to satisfy the requirements specified by the existing regulations and ask these taxpayers to perfect their requests within a specified period of time. The IRS considers requests perfected within the time specified to be timely. The intention of the IRS and the Treasury Department is to incorporate this administrative procedure into the proposed regulations. The final regulations more clearly state that the IRS will make a reasonable attempt to contact taxpayers to give them a reasonable period of time to perfect incomplete requests. However, the timeframe in which to respond to the request, and the method of delivery of the request (i.e., orally or in writing) are more appropriately addressed in the Internal Revenue Manual. The final regulations make clear that requests perfected within the time period specified by the IRS will be considered timely.

The final regulations do not adopt the suggestion to establish a period of time during which a taxpayer is allowed to perfect an incomplete request, without regard to a perfection request from the IRS. The IRS and Treasury Department believe that the procedure incorporated into the final regulations is sufficient to permit taxpayers to ensure their requests are complete.

The comments recommended that the IRS Office of Appeals (Appeals) be given the discretion to permit a taxpayer to amend an imperfect hearing request after the period for perfecting the request has expired, if the taxpayer can demonstrate that such amendment furthers an alternative to collection. This change to the regulations is unnecessary because Appeals is already empowered to exercise this discretion. Neither the current regulations nor the proposed amendments limits Appeals from exercising this discretion. Accordingly, the final regulations do not adopt this recommendation. Further clarification, however, will be provided in the Internal Revenue Manual.

The comments suggested that where a taxpayer fails to perfect a CDP hearing request until after the time period specified by the IRS, the perfected request should be automatically treated as a request for an equivalent hearing. Treating untimely perfected requests as equivalent hearing requests may unduly prolong the process in cases in which a taxpayer does not want an equivalent hearing. Accordingly, the final regulations do not adopt this suggestion. The final regulations, however, provide that Appeals will determine the timeliness of CDP hearing requests. The final regulations also add to the proposed regulations that taxpayers making an untimely request will be provided the opportunity to have the request for CDP hearing treated as a request for equivalent hearing, without submitting an additional request.

The comments requested that the final regulations give taxpayers whose hearing requests might be construed as making a frivolous argument the right to amend their hearing requests to raise relevant, non-frivolous issues. The comments further recommended that all taxpayers be given the right to supplement the hearing request prior to the conference conducted by Appeals.

These comments indicate concern that taxpayers may be unable to articulate reasons for disagreeing with the collection action that are satisfactory to Appeals. The reasons for disagreeing with the collection action need not be detailed. To assist taxpayers in articulating reasons, the IRS is revising Form 12153, ''Request for a Collection Due Process Hearing,'' to add examples of the most common reasons taxpayers give for requesting a hearing, including requests for collection alternatives. In any event, the informal nature of the CDP hearing permits taxpayers and Appeals to discuss collection alternatives and issues not listed in the hearing request if such discussion will help resolve the case. Accordingly, the final regulations do not adopt these recommendations.

The comments urged that the final regulations guarantee a face-to-face conference for each taxpayer who presents a relevant, non-frivolous reason for disagreement with the collection action. If this recommendation is not adopted, the comments suggest that the regulations address and provide examples of when a face-to-face conference will not be granted. The final regulations do not adopt the recommendation to guarantee a face-to-face conference for each taxpayer raising a relevant, non-frivolous issue. The IRS and the Treasury Department agree with the comments that a face-to-face conference can be a useful forum for resolving a taxpayer's issues. The final regulations recognize the importance of a face-to-face meeting by providing that taxpayers will ordinarily be offered an opportunity for a face-to-face conference. There will be instances, however, when a face-to-face conference is not practical. The final regulations identify typical situations in which a face-to-face conference will be neither necessary nor productive. Except for these situations, the IRS and the Treasury Department anticipate that Appeals will afford a face-to-face meeting to taxpayers who request one. Nonetheless, unanticipated circumstances may arise in which granting a face-to-face conference will not be appropriate. The final regulations give Appeals the flexibility needed to respond to unanticipated circumstances.

Adoption of the comment requesting guidance on when a face-to-face conference will not be granted is unnecessary. The final regulations retain descriptions of situations in which a face-to-face conference will not be granted, as illustrated in the proposed regulations. Further guidance on granting face-to-face conferences will be provided in the Internal Revenue Manual.

The comments suggested that a taxpayer who appears to be presenting only frivolous reasons be given an opportunity to provide relevant, non-frivolous reasons in order to obtain a face-to-face conference. Adoption of this recommendation is unnecessary. Correspondence sent by Appeals to taxpayers who make only frivolous arguments invites them to submit

relevant, non-frivolous reasons. Appeals offers face-to-face conferences to taxpayers who respond by providing such reasons.

The comments also suggested that the regulations define relevant and frivolous. The IRS and the Treasury Department believe that any attempt to define these terms is unnecessary and could result in underinclusive definitions. For example, the comments suggest that a frivolous issue be defined as an issue that is the same or substantially similar to an issue identified as frivolous by the IRS in published guidance. It is not possible to anticipate or keep pace with the evolution of frivolous arguments through published guidance. Instead, taxpayers are advised to consult the lists of examples of frivolous arguments in IRS Publication 2105, ''Why Do I Have to Pay Taxes'' and on the IRS Web site in a document entitled ''The Truth about Frivolous Tax Arguments.'' The names and Web addresses of these documents, and a toll-free number to order Publication 2105, will be added to the instructions to Form 12153 to help taxpayers avoid making these arguments.

The comments recommended clarification of the proposed rule that a face-to-face conference concerning a collection alternative will not be granted unless the alternative would be available to other taxpayers in similar circumstances. According to the comments, a taxpayer should not be denied a face-to-face conference because the requested collection alternative cannot be accepted, for example, because it appears from financial information that the taxpayer can pay the liabilities in full. This proposed rule was not intended to deny a face-to-face conference because the requested collection alternative would not be accepted. The intention of this rule is to permit the denial of a face-to-face conference to discuss a collection alternative for which the taxpayer is not eligible. A lack of eligibility under IRS policy is tied to a taxpayer's compliance with the Federal tax laws, not to the taxpayer's financial circumstances or ability to request the most appropriate alternative. For example, if the taxpayer has not filed all required tax returns, the taxpayer is not eligible for an offer to compromise or an installment agreement.

In response to the concerns expressed in the comments, the final regulations amplify the rule that a face-to-face conference to discuss a collection alternative will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. The final regulations provide in A–D8 that Appeals in its discretion may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. The final regulations also provide that taxpayers will be given an opportunity to demonstrate they are eligible for a collection alternative in order to obtain a face-to-face conference to discuss the alternative. Taxpayers will also be given an opportunity to become eligible for a collection alternative in order to obtain a face-to-face conference. For example, under the final regulations, if a taxpayer appears to have failed to file all required returns (and thus appears not to be eligible for an offer to compromise or an installment agreement), the taxpayer will be given an opportunity to demonstrate the inapplicability of the filing requirements or to file delinquent returns, in order to obtain a face-to-face conference. The final regulations further provide that a taxpayer's eligibility for a collection alternative does not include the taxpayer's ability to pay the unpaid tax.

The comments expressed concern that the amendment providing a face-to-face conference at an Appeals office other than an office in which all officers or employees had prior involvement could be construed as giving Appeals the discretion to deny a face-to-face conference even if the taxpayer would have been granted a face-to-face conference at the original location. The relevant sentence in A–D8 in the final regulations has been rewritten to make clear that Appeals does not have discretion to deny a face-to-face conference at an alternate location if the taxpayer would have been granted a face-to-face conference but for the disqualification of the Appeals employees at the original location.

The comments suggested that the regulations permit face-to-face conferences to be held not only at the Appeals office closest to the taxpayer's residence or, for a business taxpayer, the taxpayer's principal place of business, but also at the Appeals office closest to the taxpayer's school or place of employment, the authorized representative's place of business, or some other location convenient to the taxpayer or the taxpayer's representative. The IRS and Treasury Department believe the rules for CDP hearings should be consistent with the treatment of other proceedings in Appeals. The long-standing practice of Appeals in cases not docketed in the Tax Court is to grant face-to-face conferences in the Appeals office closest to the taxpayer's residence or principal place of business. The practice is retained in the final regulations. Appeals will, however, attempt to accommodate reasonable requests to hold the face-to-face conference at an Appeals office more convenient to the taxpayer.

The comments expressed concern that the definition of prior involvement under section 6320(b)(3) or 6330(b)(3) in the proposed regulations could be construed too narrowly in two ways. First, the definition of prior involvement as involvement in a prior hearing or proceeding could be read to exclude involvement in some informal settings, e.g., the Appeals officer's participation in a mediation session. In order to clarify that no such limitation is intended, the final regulations substitute matter for hearing or proceeding in A–D4 of paragraph (d)(2). Second, defining prior involvement to exist when the Appeals officer previously considered the same tax liability could be construed as excluding from the definition instances in which the Appeals officer previously considered questions bearing only on collection issues. The final regulations adopt the suggestion in the comments to remove the word liability in A–D4 in order to eliminate the potential interpretation that there is a distinction between liability and collection issues in determining prior involvement.

The comments also requested that a mediation example be added to paragraph (d)(3). The IRS and the Treasury Department believe that the change made to A–D4 adequately clarifies the definition of prior involvement. This example and others will be added to the Internal Revenue Manual to ensure the proper administration of sections 6320(b)(3) and 6330(b)(3).

The comments recommended that the regulations address the treatment of *ex parte* communications during CDP hearings. The rules applicable to *ex parte* communications during CDP hearings and other Appeals proceedings are provided in Rev. Proc. 2000–43, 2000–43 I.R.B. 404. Therefore, these rules are not duplicated in the regulations under sections 6320 and 6330.

The comments recommended that the regulations be amended to provide that self-reported tax liabilities may be disputed in a CDP hearing. The final regulations adopt this recommendation. See also *Montgomery* v. *Commissioner*, 122 T.C. 1 (2004), *acq.* 2005–51 I.R.B. 1152.

The comments also requested changes in the existing regulations' interpretation of preclusive events under section 6330(c)(2)(B). Under section 6330(c)(2)(B), during a CDP hearing, a taxpayer may challenge the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. According to the comments, the only opportunity to dispute the tax liability that is sufficient to prevent the taxpayer from challenging the liability in a CDP hearing is the prior opportunity to dispute the liability in a judicial forum. The IRS and the Treasury Department believe that the existing regulations correctly include an opportunity for an Appeals conference as a preclusive prior opportunity. The text of section 6330(c)(2)(B) does not contain language limiting prior opportunities to judicial proceedings. Moreover, it is consistent for a taxpayer who has had an opportunity to obtain a determination of liability by Appeals in one administrative hearing to be precluded from obtaining an Appeals determination in a subsequent CDP administrative hearing with respect to the same liability. This interpretation of section 6330(c)(2)(B) has been upheld by the courts. See, e.g., *Pelliccio* v. *United States*, 253 F. Supp. 2d 258, 261–62 (D. Conn. 2003). Accordingly, the final regulations do not adopt this suggestion.

Alternatively, the comments recommended that the regulations specify that a pre-CDP Appeals conference is not a prior opportunity to dispute liability under section 6330(c)(2)(B) if the receipt of the conference was conditioned upon the taxpayer's agreement to extend the assessment statute of limitations with respect to the liability and the taxpayer declined to extend the statute. The IRS and Treasury Department believe this addition is unnecessary. For taxes subject to deficiency procedures, the relevant, pre-assessment ''prior opportunity'' is the receipt of the notice of deficiency. The offer of an Appeals conference prior to receipt of the notice of deficiency does not constitute an opportunity to dispute the liability under section 6330(c)(2)(B). This interpretation of section 6330(c)(2)(B) has been added to paragraph (e)(3) A–E2 to remove any uncertainty about this matter. For liabilities not subject to deficiency procedures, the offer of an Appeals conference prior to assessment constitutes an opportunity to dispute the liability under section 6330(c)(2)(B). Appeals conferences to consider these types of liabilities are rarely conditioned upon an extension of the assessment statute of limitations. The IRS generally makes conditional offers of a conference only when a taxpayer makes an untimely request for review of a proposed Trust Fund Recovery Penalty pursuant to a Letter 1153 and less than one year remains on the assessment statute of limitations. In this circumstance, however, the opportunity for an Appeals conference offered in the Letter 1153 constitutes the opportunity to dispute the liability under section 6330(c)(2)(B). The conditional offer made after the expiration of the prior opportunity provided in the Letter 1153 is irrelevant. For these reasons, the final regulations do not adopt this comment.

The comments objected to the addition of a definition of administrative record to the regulations as an attempt to overrule the Tax Court's decision in *Robinette* v. *Commissioner,* 123 T.C. 85 (2004), *rev'd,* 439 F.3d 455 (8th Cir. 2006). The assumption that *Robinette* eliminated any role for an administrative record in CDP court proceedings is not supported by the Court's opinion. While the Tax Court held in *Robinette* that it was not required to limit its abuse-of-discretion review to the administrative record, it did not reject the utility of an administrative record. Subsequent to the submission of the comments, the United States Court of Appeals for the Eighth Circuit reversed the Tax Court and held that abuse-of-discretion review in CDP cases is limited to the administrative record. *Robinette* v. *Commissioner,* 439 F.3d 455 (8th Cir. 2006). For these reasons, it is important that taxpayers and the IRS have a common understanding of the scope of the administrative record. The definition is retained in the final regulations.

The comments suggested that the proposed definition of the administrative record permits Appeals officers and employees to exclude from the record for judicial review issues, arguments, and evidence presented orally by the taxpayer, and to exclude written communications and documents. The administrative record definition is not intended to suggest that the reviewing court is not permitted to determine the contents of the administrative record or the record's adequacy in an individual case. The reviewing court has the authority to receive evidence concerning what happened during the CDP hearing. The definition is provided to establish for the benefit of the IRS and taxpayers a baseline description of what each administrative record should contain to ensure a record sufficient for judicial review. The final regulations have not been changed in this regard. The final regulations, however, adopt the suggestion that the description of the case file in A–D7 and in the definition of administrative record in A–F6 of the proposed regulations (redesignated as A–F4 in the final regulations) be made consistent.

The comments recommended that the final regulations require each Appeals officer to include in the notice of determination a list of the documents the Appeals officer believes are included in the administrative record. The justification for this proposed requirement is that the list would assist the taxpayer in deciding whether to seek judicial review. The list of documents, according to the comments, will also assist the court and taxpayers seeking review to more efficiently ascertain whether there was an abuse of discretion.

The final regulations do not adopt this recommendation. Requiring Appeals officers to prepare a list of documents constituting the administrative record in each of the thousands of cases handled each year would impose a heavy burden on Appeals without a commensurate benefit to taxpayers. The notice of determination issued in each case describes the facts and reasons supporting the Appeals officer's determination and should provide an adequate basis for the taxpayer's decision whether to seek judicial review.

The IRS and the Treasury Department acknowledge that disputes have arisen with respect to the contents of the administrative record in CDP cases and that there are no special rules in place to resolve these disputes. An appropriate solution could involve the Tax Court's development of rules governing the preparation and submission of the administrative record for abuse-of-discretion review, particularly now that the recently-enacted Pension Protection Act of 2006 requires all CDP cases to be litigated in the Tax Court.

The comments suggested removal of the limitation in the existing regulations that a taxpayer is precluded from obtaining judicial review of an issue not raised with Appeals during the CDP hearing. As an alternative, the comments recommended that a taxpayer only be prevented from raising those issues the taxpayer could have, but failed to raise during the CDP hearing. The limitation in the existing regulations implements a basic principle of administrative law that

those seeking review of an issue must first give the agency the opportunity to evaluate and respond to the issue. This limitation has been upheld in the courts. See *Robinette* v. *Commissioner,* 123 T.C. 85, 101–102 (2004), *rev'd on other grounds,* 439 F.3d 455 (8th Cir. 2006); *Magana* v. *Commissioner,* 118 T.C. 488, 493 (2002); *Abu-Awad* v. *United States,* 294 F. Supp. 2d 879, 889 (S.D. Tex. 2003). Accordingly, the final regulations do not adopt either of these recommendations.

The comments recommended that if the limitation on the taxpayer's ability to raise new issues during judicial review is retained, then the amendment to A–F5 (redesignated as A–F3 in the final regulations) should clarify that a taxpayer need not provide the evidence specified by Appeals with respect to an issue in order to present ''any evidence'' necessary to properly raise the issue. The IRS and the Treasury Department believe this change is unnecessary. The revision to A–F5 (redesignated as A–F3) does not suggest that the ''any evidence'' needed to avoid preclusion must be the evidence specified by Appeals. The revised language simply requires that the taxpayer submit some evidentiary support. This suggestion is not adopted in the final regulations.

The comments also suggested adding that a taxpayer need not provide any evidence to avoid preclusion if the case file already contains evidence with respect to that issue. This addition is not necessary. If the case file contains all the information needed for a decision on an issue, an Appeals officer will not request any additional evidence and the revised language in A–F5 (redesignated as A–F3 in the final regulations) will not apply. In the unlikely event that an Appeals officer making a determination on an issue requested information already in the file, a reviewing court should find the taxpayer's failure to provide any evidence does not prevent the issue from being raised. The final regulations do not adopt this recommendation.

The comments urged that the regulations make clear that the authority of Appeals officers to determine the validity, sufficiency and timeliness of a CDP notice does not alter or limit the authority of the reviewing court to make the same determination. The IRS and the Treasury Department believe this clarification is unnecessary. It is well-settled that reviewing courts have the authority to determine the validity, sufficiency and timeliness of a CDP notice. See, e.g., *Kennedy* v. *Commissioner,* 116 T.C. 255 (2001). This clarification is not adopted in the final regulations.

The comments recommended that administrative rules similar to those developed under section 6015 be added to the regulations. The regulations state that a spousal defense raised under section 66 or 6015 is governed by section 66 or 6015 and the regulations and procedures thereunder. See Treas. Reg. § 301.6330–1(e)(2). To the extent it is determined that further guidance is necessary, such guidance will be in the form of additions to the Internal Revenue Manual. The final regulations do not adopt this recommendation.

The final regulations include amendments to the existing regulations to remove references to judicial review by United States district courts. The Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, section 855 amended section 6330(d) to eliminate the jurisdiction of the district courts to review notices of determination, leaving the Tax Court with sole jurisdiction. For this reason, Q&A–F3 and Q&A–F4 in the existing regulations are removed by the final regulations and Q&A–F5 and Q&A–F6 in the proposed regulations are redesignated as Q&A–F3 and Q&A–F4 in the final regulations. In addition, only the Tax Court is now mentioned in A–E11, paragraph (f)(1), A–F1, redesignated Q&A–F3 and Q&A–F4, *Example 1* of paragraph (g)(3), Q&A–H2 and redesignated Q–I6.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In particular, the IRS and the Treasury Department find for good cause that a notice of proposed rulemaking and solicitation of public comments are unnecessary to amend the existing regulations to implement the modification of section 6330(d) by the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780. These amendments are made solely to conform the regulations to the statutory change enacted by Congress. The amendments do not involve any exercise of discretion or interpretation by the IRS or Treasury Department and the removal of United States district court jurisdiction would become effective even if the amendments were not made. Accordingly, the notice and public comment procedures do not apply. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6330–1 is amended as follows:

■ 1. Paragraph (c)(2) A–C1, Q&A–C6 and A–C7 are revised.
■ 2. Paragraph (d)(2) A–D4 and A–D7 are revised.
■ 3. Paragraph (d)(2) Q&A–D8 is added.
■ 4. Paragraph (d)(3) is added.
■ 5. Paragraph (e)(1) is revised.
■ 6. Paragraph (e)(3) A–E2, A–E6, A–E7 and A–E11 are revised.
■ 7. Paragraph (f)(1) is revised.
■ 8. Paragraph (f)(2) A–F1 is revised.
■ 9. Paragraph (f)(2) Q&A–F3 is removed.
■ 10. Paragraph (f)(2) Q&A–F5 is revised and redesignated Q&A–F3.
■ 11. Paragraph (f)(2) Q&A–F4 is revised.
■ 12. Paragraph (g)(3) *Example 1* is revised.
■ 13. Paragraph (h)(2) Q&A–H2 is revised.
■ 14. Paragraph (i)(2) Q–I5 is redesignated Q–I6 and revised.
■ 15. Paragraph (i)(2) A–I5 is redesignated A–I6
■ 16. Paragraph (i)(2) Q&A–I1 through Q&A–I4 are redesignated Q&A–I2 through Q&A–I5.
■ 17. Paragraph (i)(2) Q&A–I1 and Q&A–I7 through Q&A–I11 are added.
■ 18. Paragraph (j) is revised.

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

* * * * *

(c) * * *

(2) * * *

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall include the information and signature specified in A–C1(ii) of this paragraph (c)(2). See A–D7 and A–D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) If the IRS receives a timely written request for CDP hearing that does not satisfy the requirements set forth in A–C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely written request for a CDP hearing that does not satisfy the requirements set forth in A–C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use Form 12153, ''Request for a Collection Due Process Hearing,'' in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, *http://www.irs.gov/pub/irs-pdf/f12153.pdf,* or by calling, toll-free, 1–800–829–3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely CDP hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–C6. Where must the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

* * * * *

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the date of the CDP Notice, the taxpayer foregoes the right to a CDP hearing under section 6330 with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the 30-day period that does not satisfy the requirements set forth in A–C1(ii)(A), (B), (C), (D) or (F) of this paragraph (c)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A–C1(iii) of this paragraph (c)(2). If the request for CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an equivalent hearing. In such cases, the taxpayer may obtain an equivalent hearing without submitting an additional request. See paragraph (i) of this section.

* * * * *

(d) * * *

(2) * * *

A–D4. Prior involvement by an Appeals officer or employee includes participation or involvement in a matter (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP matter, and the Appeals officer or employee actually participated in the prior matter.

* * * * *

A–D7. Except as provided in A–D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the proposed levy will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, as described in A–F4 of paragraph (f)(2). If no face-to-face or telephonic conference is held, or other oral communication takes place, review of the documents in the case file, as described in A–F4 of paragraph (f)(2), will constitute the CDP hearing for purposes of section 6330(b).

Q–D8. In what circumstances will a face-to-face CDP conference not be granted?

A–D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A–D7 of this paragraph (d)(2) and this A–D8. If all Appeals officers or employees at the location provided for in A–D7 of this paragraph (d)(2) have had prior involvement with the taxpayer as provided in A–D4 of this paragraph (d)(2), the taxpayer will not be offered a face-to-face conference at that location, unless the taxpayer elects to waive the requirement of section 6330(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals would have offered the taxpayer a face-to-face conference at the location provided in A–D7 of this paragraph (d)(2), but for the disqualification of all Appeals officers or employees at that location. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise,'' no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. Appeals in its discretion, however, may grant a face-to-

face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. In all cases, a taxpayer will be given an opportunity to demonstrate eligibility for a collection alternative and to become eligible for a collection alternative, in order to obtain a face-to-face conference. For purposes of determining whether a face-to-face conference will be granted, the determination of a taxpayer's eligibility for a collection alternative is made without regard to the taxpayer's ability to pay the unpaid tax. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A–C1(ii)(E) of paragraph (c)(2). See also A–C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a NFTL filed with respect to individual A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6320 CDP hearing, employee B may conduct the CDP hearing under section 6330 involving the proposed levy for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a proposed levy for the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to individual C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6330 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to individual C's 1998 income tax liability.

Example 3. Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941, ''Employer's Quarterly Federal Tax Return.'' Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a proposed levy for a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a proposed levy for a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the proposed levy have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed levy, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) * * *

A–E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

* * * * *

A–E6. Collection alternatives include, for example, a proposal to withhold the proposed levy or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A–D8 of paragraph (d)(2).

* * * * *

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not have a prior opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability.

* * * * *

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6320 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals

officer may consider the existence or amount of the underlying tax liability, or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer on such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by the Tax Court because the precluded issue is not properly part of the CDP hearing.

* * * * *

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) * * *

A–F1. Subject to the jurisdictional limitations described in A–F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

* * * * *

Q–F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A–F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q–F4. What is the administrative record for purposes of Tax Court review?

A–F4. The case file, including the taxpayer's request for hearing, any other written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative, memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in the Tax Court review of the Notice of Determination issued by Appeals.

(g) * * *

(3) * * *

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the Tax Court, plus 90 days.

* * * * *

(h) * * *

(2) * * *

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court.

(i) * * *

(2) * * *

Q–I1. What must a taxpayer do to obtain an equivalent hearing?

A–I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information and signature required in A–I1(ii) of this paragraph (i)(2).

(ii) The request must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (*e.g.*, SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the levy.

(E) The reason or reasons why the taxpayer disagrees with the proposed levy.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not satisfy the requirements set forth in A–I1(ii) of this paragraph (i)(2) within a reasonable period of time after a request from the IRS. If the requirements are not satisfied within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in A–I1(ii) of this paragraph (i)(2), by filing, within a reasonable period of time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely equivalent hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–I6. Will a taxpayer be able to obtain Tax Court review of a decision made by Appeals with respect to an equivalent hearing?

* * * * *

Q–I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6330?

A–I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q–I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A–I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A–I10 of this paragraph (i)(2).

Q–I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A–I9. No. All taxpayers who want an equivalent hearing must request the hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q–I10. Where must the written request for an equivalent hearing be sent?

A–I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (*e.g.*, SSN, ITIN or EIN).

Q–I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330?

A–I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the date of the CDP Notice issued under section 6330, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A–I1(ii) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A–I1(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) *Effective date.* This section is applicable on or after November 16, 2006 with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: October 6, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–17133 Filed 10–16–06; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9290]

RIN 1545–BB96

Miscellaneous Changes to Collection Due Process Procedures Relating to Notice and Opportunity for Hearing Upon Filing of Notice of Federal Tax Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations amending the regulations relating to a taxpayer's right to a hearing under section 6320 of the Internal Revenue Code of 1986 after the filing of a notice of Federal tax lien (NFTL). The final regulations make certain clarifying changes in the way collection due process (CDP) hearings are held and specify the period during which a taxpayer may request an equivalent hearing. The final regulations affect taxpayers against whose property or rights to property the Internal Revenue Service (IRS) files a NFTL.

DATES: *Effective Date:* These regulations are effective on November 16, 2006.

Applicability Date: These regulations apply to requests for CDP or equivalent hearings on or after November 16, 2006.

FOR FURTHER INFORMATION CONTACT: Laurence K. Williams, 202–622–3600 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Regulations on Procedure and Administration (26 CFR part 301) relating to the provision of notice under section 6320 of the Internal Revenue Code to taxpayers of a right to a CDP hearing (CDP Notice) after the IRS files a NFTL. Final regulations (TD 8979) were published on January 18, 2002, in the **Federal Register** (67 FR 2558) (the 2002 final regulations). The 2002 final regulations implemented certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206, 112 Stat. 685)(RRA 1998), including the addition of section 6320 to the Internal Revenue Code.

Section 3401 of RRA 1998 also added section 6330 to the Internal Revenue Code. That statute provides for notice to taxpayers of a right to a hearing before or, in limited cases, after levy. A number of the provisions in section 6330 concerning the conduct and judicial review of a CDP hearing are incorporated by reference in section 6320. On January 18, 2002, final regulations (TD 8980) under section 6330 were published in the **Federal Register** (67 FR 2549) along with the 2002 final regulations under section 6320.

On September 16, 2005, the IRS and the Treasury Department published in the **Federal Register** (70 FR 54681) a notice of proposed rulemaking and notice of public hearing (REG–150088–02). The IRS received one set of written comments responding to the notice of proposed rulemaking. Because no one requested to speak at the public hearing, the hearing was cancelled. After considering each of the comments, the proposed regulations are adopted as amended by this Treasury decision.

On August 17, 2006, the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (the PPA), was enacted. Section 855 of the PPA amended section 6330(d) of the Internal Revenue Code to withdraw judicial review of CDP notices of determination from United States district court jurisdiction, leaving review solely in the United States Tax Court. Section 6330(d) is made applicable to section 6320 hearings by section 6320(c). The amendment to section 6330(d), effective for notices of determination issued on or after October 17, 2006, requires the removal of references to district court review in the 2002 final regulations. This Treasury decision removes those references.

The IRS and the Treasury Department have determined that a notice of proposed rulemaking and solicitation of public comments are not required to amend the regulations to implement the modification to section 6330(d). These amendments are made solely to conform the regulations to a statutory change enacted by Congress. Because the amendments do not involve any exercise of discretion or interpretation,

the notice and public comment procedures are unnecessary.

The comments and changes to the proposed regulations, and the amendments required by the Congressional modification to section 6330(d), are discussed below.

Summary of Comments and Explanation of Changes

The comments suggested that the IRS be required to contact taxpayers who timely file an incomplete request for CDP hearing to give them the opportunity to perfect the request within a reasonable time period and further recommended that such contact be in writing and identify the infirmity requiring perfection. The comments also recommended that the final regulations establish a specific time period during which taxpayers may, by right, amend or perfect their previously-filed yet incomplete CDP hearing request. The request, according to the comments, should be considered timely if it is perfected within the applicable time period.

Currently, the practice of the IRS is to contact taxpayers whose hearing requests fail to satisfy the requirements specified by the existing regulations and ask these taxpayers to perfect their requests within a specified period of time. The IRS considers requests perfected within the time specified to be timely. The intention of the IRS and the Treasury Department is to incorporate this administrative procedure into the proposed regulations. The final regulations more clearly state that the IRS will make a reasonable attempt to contact taxpayers to give them a reasonable period of time to perfect incomplete requests. However, the timeframe in which to respond to the request, and the method of delivery of the request (*i.e.*, orally or in writing) are more appropriately addressed in the Internal Revenue Manual. The final regulations make clear that requests perfected within the time period specified by the IRS will be considered timely.

The final regulations do not adopt the suggestion to establish a period of time during which a taxpayer is allowed to perfect an incomplete request, without regard to a perfection request from the IRS. The IRS and Treasury Department believe that the procedure incorporated into the final regulations is sufficient to permit taxpayers to ensure their requests are complete.

The comments recommended that the IRS Office of Appeals (Appeals) be given the discretion to permit a taxpayer to amend an imperfect hearing request after the period for perfecting the request has expired, if the taxpayer can demonstrate that such amendment furthers an alternative to collection. This change to the regulations is unnecessary because Appeals is already empowered to exercise this discretion. Neither the current regulations nor the proposed amendments limits Appeals from exercising this discretion. Accordingly, the final regulations do not adopt this recommendation. Further clarification, however, will be provided in the Internal Revenue Manual.

The comments suggested that where a taxpayer fails to perfect a CDP hearing request until after the time period specified by the IRS, the perfected request should be automatically treated as a request for an equivalent hearing. Treating untimely perfected requests as equivalent hearing requests may unduly prolong the process in cases in which a taxpayer does not want an equivalent hearing. Accordingly, the final regulations do not adopt this suggestion. The final regulations, however, provide that Appeals will determine the timeliness of CDP hearing requests. The final regulations also add to the proposed regulations that taxpayers making an untimely request will be provided the opportunity to have the request for CDP hearing treated as a request for equivalent hearing, without submitting an additional request.

The comments requested that the final regulations give taxpayers whose hearing requests might be construed as making a frivolous argument the right to amend their hearing requests to raise relevant, non-frivolous issues. The comments further recommended that all taxpayers be given the right to supplement the hearing request prior to the conference conducted by Appeals.

These comments indicate concern that taxpayers may be unable to articulate reasons for disagreeing with the collection action that are satisfactory to Appeals. The reasons for disagreeing with the collection action need not be detailed. To assist taxpayers in articulating reasons, the IRS is revising Form 12153, ''Request for a Collection Due Process Hearing,'' to add examples of the most common reasons taxpayers give for requesting a hearing, including requests for collection alternatives. In any event, the informal nature of the CDP hearing permits taxpayers and Appeals to discuss collection alternatives and issues not listed in the hearing request if such discussion will help resolve the case. Accordingly, the final regulations do not adopt these recommendations.

The comments urged that the final regulations guarantee a face-to-face conference for each taxpayer who presents a relevant, non-frivolous reason for disagreement with the collection action. If this recommendation is not adopted, the comments suggest that the regulations address and provide examples of when a face-to-face conference will not be granted. The final regulations do not adopt the recommendation to guarantee a face-to-face conference for each taxpayer raising a relevant, non-frivolous issue. The IRS and the Treasury Department agree with the comments that a face-to-face conference can be a useful forum for resolving a taxpayer's issues. The final regulations recognize the importance of a face-to-face meeting by providing that taxpayers will ordinarily be offered an opportunity for a face-to-face conference. There will be instances, however, when a face-to-face conference is not practical. The final regulations identify typical situations in which a face-to-face conference will be neither necessary nor productive. Except for these situations, the IRS and the Treasury Department anticipate that Appeals will afford a face-to-face meeting to taxpayers who request one. Nonetheless, unanticipated circumstances may arise in which granting a face-to-face conference will not be appropriate. The final regulations give Appeals the flexibility needed to respond to unanticipated circumstances.

Adoption of the comment requesting guidance on when a face-to-face conference will not be granted is unnecessary. The final regulations retain descriptions of situations in which a face-to-face conference will not be granted, as illustrated in the proposed regulations. Further guidance on granting face-to-face conferences will be provided in the Internal Revenue Manual.

The comments suggested that a taxpayer who appears to be presenting only frivolous reasons be given an opportunity to provide relevant, non-frivolous reasons in order to obtain a face-to-face conference. Adoption of this recommendation is unnecessary. Correspondence sent by Appeals to taxpayers who make only frivolous arguments invites them to submit relevant, non-frivolous reasons. Appeals offers face-to-face conferences to taxpayers who respond by providing such reasons.

The comments also suggested that the regulations define relevant and frivolous. The IRS and the Treasury Department believe that any attempt to define these terms is unnecessary and could result in underinclusive definitions. For example, the comments suggest that a frivolous issue be defined as an issue that is the same or

substantially similar to an issue identified as frivolous by the IRS in published guidance. It is not possible to anticipate or keep pace with the evolution of frivolous arguments through published guidance. Instead, taxpayers are advised to consult the lists of examples of frivolous arguments in IRS Publication 2105, ''Why Do I Have to Pay Taxes'' and on the IRS Web site in a document entitled ''The Truth about Frivolous Tax Arguments.'' The names and web addresses of these documents, and a toll-free number to order Publication 2105, will be added to the instructions to Form 12153 to help taxpayers avoid making these arguments.

The comments recommended clarification of the proposed rule that a face-to-face conference concerning a collection alternative will not be granted unless the alternative would be available to other taxpayers in similar circumstances. According to the comments, a taxpayer should not be denied a face-to-face conference because the requested collection alternative cannot be accepted, for example, because it appears from financial information that the taxpayer can pay the liabilities in full. This proposed rule was not intended to deny a face-to-face conference because the requested collection alternative would not be accepted. The intention of this rule is to permit the denial of a face-to-face conference to discuss a collection alternative for which the taxpayer is not eligible. A lack of eligibility under IRS policy is tied to a taxpayer's compliance with the Federal tax laws, not to the taxpayer's financial circumstances or ability to request the most appropriate alternative. For example, if the taxpayer has not filed all required tax returns, the taxpayer is not eligible for an offer to compromise or an installment agreement.

In response to the concerns expressed in the comments, the final regulations amplify the rule that a face-to-face conference to discuss a collection alternative will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. The final regulations provide in A–D8 that Appeals in its discretion may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible for a collection alternative. The final regulations also provide that taxpayers will be given an opportunity to demonstrate they are eligible for a collection alternative in order to obtain a face-to-face conference to discuss the alternative. Taxpayers will also be given an opportunity to become eligible for a collection alternative in order to obtain a face-to-face conference. For example, under the final regulations, if a taxpayer appears to have failed to file all required returns (and thus appears not to be eligible for an offer to compromise or an installment agreement), the taxpayer will be given an opportunity to demonstrate the inapplicability of the filing requirements or to file delinquent returns, in order to obtain a face-to-face conference. The final regulations further provide that a taxpayer's eligibility for a collection alternative does not include the taxpayer's ability to pay the unpaid tax.

The comments expressed concern that the amendment providing a face-to-face conference at an Appeals office other than an office in which all officers or employees had prior involvement could be construed as giving Appeals the discretion to deny a face-to-face conference even if the taxpayer would have been granted a face-to-face conference at the original location. The relevant sentence in A–D8 in the final regulations has been rewritten to make clear that Appeals does not have discretion to deny a face-to-face conference at an alternate location if the taxpayer would have been granted a face-to-face conference but for the disqualification of the Appeals employees at the original location.

The comments suggested that the regulations permit face-to-face conferences to be held not only at the Appeals office closest to the taxpayer's residence or, for a business taxpayer, the taxpayer's principal place of business, but also at the Appeals office closest to the taxpayer's school or place of employment, the authorized representative's place of business, or some other location convenient to the taxpayer or the taxpayer's representative. The IRS and Treasury Department believe the rules for CDP hearings should be consistent with the treatment of other proceedings in Appeals. The longstanding practice of Appeals in cases not docketed in the Tax Court is to grant face-to-face conferences in the Appeals office closest to the taxpayer's residence or principal place of business. The practice is retained in the final regulations. Appeals will, however, attempt to accommodate reasonable requests to hold the face-to-face conference at an Appeals office more convenient to the taxpayer.

The comments expressed concern that the definition of prior involvement under section 6320(b)(3) or 6330(b)(3) in the proposed regulations could be construed too narrowly in two ways. First, the definition of prior involvement as involvement in a prior hearing or proceeding could be read to exclude involvement in some informal settings, *e.g.*, the Appeals officer's participation in a mediation session. In order to clarify that no such limitation is intended, the final regulations substitute matter for hearing or proceeding in A–D4 of paragraph (d)(2). Second, defining prior involvement to exist when the Appeals officer previously considered the same tax liability could be construed as excluding from the definition instances in which the Appeals officer previously considered questions bearing only on collection issues. The final regulations adopt the suggestion in the comments to remove the word liability in A–D4 in order to eliminate the potential interpretation that there is a distinction between liability and collection issues in determining prior involvement.

The comments also requested that a mediation example be added to paragraph (d)(3). The IRS and the Treasury Department believe that the change made to A–D4 adequately clarifies the definition of prior involvement. This example and others will be added to the Internal Revenue Manual to ensure the proper administration of sections 6320(b)(3) and 6330(b)(3).

The comments recommended that the regulations address the treatment of *ex parte* communications during CDP hearings. The rules applicable to *ex parte* communications during CDP hearings and other Appeals proceedings are provided in Rev. Proc. 2000–43, 2000–43 I.R.B. 404. Therefore, these rules are not duplicated in the regulations under sections 6320 and 6330.

The comments recommended that the regulations be amended to provide that self-reported tax liabilities may be disputed in a CDP hearing. The final regulations adopt this recommendation. See also *Montgomery* v. *Commissioner,* 122 T.C. 1 (2004), *acq.* 2005–51 I.R.B. 1152.

The comments also requested changes in the existing regulations' interpretation of preclusive events under section 6330(c)(2)(B). Under section 6330(c)(2)(B), during a CDP hearing, a taxpayer may challenge the existence or amount of the underlying tax liability for any tax period if the person did not receive any statutory notice of deficiency for such tax liability or did not otherwise have an opportunity to dispute such tax liability. Section 6330(c)(2)(B) is made applicable to section 6320 hearings by section

6320(c). According to the comments, the only opportunity to dispute the tax liability that is sufficient to prevent the taxpayer from challenging the liability in a CDP hearing is the prior opportunity to dispute the liability in a judicial forum. The IRS and the Treasury Department believe that the existing regulations correctly include an opportunity for an Appeals conference as a preclusive prior opportunity. The text of section 6330(c)(2)(B) does not contain language limiting prior opportunities to judicial proceedings. Moreover, it is consistent for a taxpayer who has had an opportunity to obtain a determination of liability by Appeals in one administrative hearing to be precluded from obtaining an Appeals determination in a subsequent CDP administrative hearing with respect to the same liability. This interpretation of section 6330(c)(2)(B) has been upheld by the courts. See, *e.g.*, *Pelliccio* v. *United States,* 253 F. Supp. 2d 258, 261–62 (D. Conn. 2003). Accordingly, the final regulations do not adopt this suggestion.

Alternatively, the comments also recommended that the regulations specify that a pre-CDP Appeals conference is not a prior opportunity to dispute liability under section 6330(c)(2)(B) if the receipt of the conference was conditioned upon the taxpayer's agreement to extend the assessment statute of limitations with respect to the liability and the taxpayer declined to extend the statute. The IRS and Treasury Department believe this addition is unnecessary. For taxes subject to deficiency procedures, the relevant, pre-assessment ''prior opportunity'' is the receipt of the notice of deficiency. The offer of an Appeals conference prior to receipt of the notice of deficiency does not constitute an opportunity to dispute liability under section 6330(c)(2)(B). This interpretation of section 6330(c)(2)(B) has been added to paragraph (e)(3) A–E2 to remove any uncertainty about this matter. For liabilities not subject to deficiency procedures, the offer of an Appeals conference prior to assessment constitutes an opportunity to dispute the liability under section 6330(c)(2)(B). Appeals conferences to consider these types of liabilities are rarely conditioned upon an extension of the assessment statute of limitations. The IRS generally makes conditional offers of a conference only when a taxpayer makes an untimely request for review of a proposed Trust Fund Recovery Penalty pursuant to a Letter 1153 and less than one year remains on the assessment statute of limitations. In this circumstance, however, the opportunity for an Appeals conference offered in the Letter 1153 constitutes the opportunity to dispute the liability under section 6330(c)(2)(B). The conditional offer made after the expiration of the prior opportunity provided in the Letter 1153 is irrelevant. For these reasons, the final regulations do not adopt this comment.

The comments objected to the addition of a definition of administrative record to the regulations as an attempt to overrule the Tax Court's decision in *Robinette* v. *Commissioner,* 123 T.C. 85 (2004), *rev'd,* 439 F.3d 455 (8th Cir. 2006). The assumption that *Robinette* eliminated any role for an administrative record in CDP court proceedings is not supported by the Court's opinion. While the Tax Court held in *Robinette* that it was not required to limit its abuse-of-discretion review to the administrative record, it did not reject the utility of an administrative record. Subsequent to the submission of the comments, the United States Court of Appeals for the Eighth Circuit reversed the Tax Court and held that abuse-of-discretion review in CDP cases is limited to the administrative record. *Robinette* v. *Commissioner,* 439 F.3d 455 (8th Cir. 2006). For these reasons, it is important that taxpayers and the IRS have a common understanding of the scope of the administrative record. The definition is retained in the final regulations.

The comments suggested that the proposed definition of the administrative record permits Appeals officers and employees to exclude from the record for judicial review issues, arguments, and evidence presented orally by the taxpayer, and to exclude written communications and documents. The administrative record definition is not intended to suggest that the reviewing court is not permitted to determine the contents of the administrative record or the record's adequacy in an individual case. The reviewing court has the authority to receive evidence concerning what happened during the CDP hearing. The definition is provided to establish for the benefit of the IRS and taxpayers a baseline description of what each administrative record should contain to ensure a record sufficient for judicial review. The final regulations have not been changed in this regard. The final regulations, however, adopt the suggestion that the description of the case file in A–D7 and in the definition of administrative record in A–F6 of the proposed regulations (redesignated as A–F4 in the final regulations) be made consistent.

The comments recommended that the final regulations require each Appeals officer to include in the notice of determination a list of the documents the Appeals officer believes are included in the administrative record. The justification for this proposed requirement is that the list would assist the taxpayer in deciding whether to seek judicial review. The list of documents, according to the comments, will also assist the court and taxpayers seeking review to more efficiently ascertain whether there was an abuse of discretion.

The final regulations do not adopt this recommendation. Requiring Appeals officers to prepare a list of documents constituting the administrative record in each of the thousands of cases handled each year would impose a heavy burden on Appeals without a commensurate benefit to taxpayers. The notice of determination issued in each case describes the facts and reasons supporting the Appeals officer's determination and should provide an adequate basis for the taxpayer's decision whether to seek judicial review.

The IRS and the Treasury Department acknowledge that disputes have arisen with respect to the contents of the administrative record in CDP cases and that there are no special rules in place to resolve these disputes. An appropriate solution could involve the Tax Court's development of rules governing the preparation and submission of the administrative record for abuse-of-discretion review, particularly now that the recently-enacted Pension Protection Act of 2006 requires all CDP cases to be litigated in the Tax Court.

The comments suggested removal of the limitation in the existing regulations that a taxpayer is precluded from obtaining judicial review of an issue not raised with Appeals during the CDP hearing. As an alternative, the comments recommended that a taxpayer only be prevented from raising those issues the taxpayer could have, but failed to raise during the CDP hearing. The limitation in the existing regulations implements a basic principle of administrative law that those seeking review of an issue must first give the agency the opportunity to evaluate and respond to the issue. This limitation has been upheld in the courts. See *Robinette* v. *Commissioner,* 123 T.C. 85, 101–102 (2004), *rev'd on other grounds,* 439 F.3d 455 (8th Cir. 2006); *Magana* v. *Commissioner,* 118 T.C. 488, 493 (2002); *Abu-Awad* v. *United States,* 294 F. Supp.2d 879, 889 (S.D. Tex. 2003). Accordingly, the final

regulations do not adopt either of these recommendations.

The comments recommended that if the limitation on the taxpayer's ability to raise new issues during judicial review is retained, then the amendment to A–F5 (redesignated as A–F3 in the final regulations) should clarify that a taxpayer need not provide the evidence specified by Appeals with respect to an issue in order to present ''any evidence'' necessary to properly raise the issue. The IRS and the Treasury Department believe this change is unnecessary. The revision to A–F5 (redesignated as A–F3) does not suggest that the ''any evidence'' needed to avoid preclusion must be the evidence specified by Appeals. The revised language simply requires that the taxpayer submit some evidentiary support. This suggestion is not adopted in the final regulations.

The comments also suggested adding that a taxpayer need not provide any evidence to avoid preclusion if the case file already contains evidence with respect to that issue. This addition is not necessary. If the case file contains all the information needed for a decision on an issue, an Appeals officer will not request any additional evidence and the revised language in A–F5 (redesignated as A–F3 in the final regulations) will not apply. In the unlikely event that an Appeals officer making a determination on an issue requested information already in the file, a reviewing court should find the taxpayer's failure to provide any evidence does not prevent the issue from being raised. The final regulations do not adopt this recommendation.

The comments urged that the regulations make clear that the authority of Appeals officers to determine the validity, sufficiency and timeliness of a CDP notice does not alter or limit the authority of the reviewing court to make the same determination. The IRS and the Treasury Department believe this clarification is unnecessary. It is well-settled that reviewing courts have the authority to determine the validity, sufficiency and timeliness of a CDP notice. See, e.g., *Kennedy* v. *Commissioner,* 116 T.C. 255 (2001). This clarification is not adopted in the final regulations.

The comments recommended that administrative rules similar to those developed under section 6015 be added to the regulations. The regulations state that a spousal defense raised under section 66 or 6015 is governed by section 66 or 6015 and the regulations and procedures thereunder. See Treas. Reg. § 301.6320–1(e)(2). To the extent it is determined that further guidance is necessary, such guidance will be in the form of additions to the Internal Revenue Manual. The final regulations do not adopt this recommendation.

The final regulations include amendments to the existing regulations to remove references to judicial review by United States district courts. The Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780, section 855 amended section 6330(d) to eliminate the jurisdiction of the district courts to review notices of determination, leaving the Tax Court with sole jurisdiction. Section 6330(d) is made applicable to section 6320 hearings by section 6320(c). To make clear in the regulations that judicial review is available only in the Tax Court, Q&A–F3 and Q&A–F4 in the existing regulations are removed by the final regulations and Q&A–F5 and Q&A–F6 in the proposed regulations are redesignated as Q&A–F3 and Q&A–F4 in the final regulations. In addition, only the Tax Court is now mentioned in A–E11, paragraph (f)(1), A–F1, redesignated Q&A–F3 and Q&A–F4, *Example 1* of paragraph (g)(3), Q&A–H2 and redesignated Q–I6.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. In particular, the IRS and the Treasury Department find for good cause that a notice of proposed rulemaking and solicitation of public comments are unnecessary to amend the existing regulations to implement the modification of section 6330(d) by the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780. These amendments are made solely to conform the regulations to the statutory change enacted by Congress. The amendments do not involve any exercise of discretion or interpretation by the IRS or Treasury Department and the removal of United States district court jurisdiction would become effective even if the amendments were not made. Accordingly, the notice and public comment procedures do not apply. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the proposed regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Laurence K. Williams, Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6320–1 is amended as follows:

■ 1. Paragraph (c)(2) A–C1, Q&A–C6 and A–C7 are revised.

■ 2. Paragraph (d)(2) A–D4 and A–D7 are revised.

■ 3. Paragraph (d)(2) Q&A–D8 is added.

■ 4. Paragraph (d)(3) is added.

■ 5. Paragraph (e)(1) is revised.

■ 6. Paragraph (e)(3) A–E2, A–E6, A–E7 and A–E11 are revised.

■ 7. Paragraph (f)(1) is revised.

■ 8. Paragraph (f)(2) A–F1 is revised.

■ 9. Paragraph (f)(2) Q&A–F3 is removed.

■ 10. Paragraph (f)(2) Q&A–F5 is revised and redesignated Q&A–F3.

■ 11. Paragraph (f)(2) Q&A–F4 is revised.

■ 12. Paragraph (g)(3) *Example 1* is revised.

■ 13. Paragraph (h)(2) Q&A–H2 is revised.

■ 14. Paragraph (i)(2) Q–I5 is redesignated Q–I6 and revised.

■ 15. Paragraph (i)(2) A–I5 is redesignated A–I6.

■ 16. Paragraph (i)(2) Q&A–I1 through Q&A–I4 are redesignated Q&A–I2 through Q&A–I5.

■ 17. Paragraph (i)(2) Q&A–I1 and Q&A–I7 through Q&A–I11 are added.

■ 18. Paragraph (j) is revised.

§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.

* * * * *

(c) * * *

(2) * * *

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. The request for a CDP hearing shall

include the information and signature specified in A–C1(ii) of this paragraph (c)(2). See A–D7 and A–D8 of paragraph (d)(2).

(ii) The written request for a CDP hearing must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) If the IRS receives a timely written request for CDP hearing that does not satisfy the requirements set forth in A–C1(ii) of this paragraph (c)(2), the IRS will make a reasonable attempt to contact the taxpayer and request that the taxpayer comply with the unsatisfied requirements. The taxpayer must perfect any timely written request for a CDP hearing that does not satisfy the requirements set forth in A–C1(ii) of this paragraph (c)(2) within a reasonable period of time after a request from the IRS.

(iv) Taxpayers are encouraged to use Form 12153, ''Request for a Collection Due Process Hearing,'' in requesting a CDP hearing so that the request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice, by downloading a copy from the IRS Internet site, *http://www.irs.gov/pub/irs-pdf/f12153.pdf,* or by calling, toll-free, 1–800–829–3676.

(v) The taxpayer must affirm any timely written request for a CDP hearing which is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative by filing, within a reasonable period of time after a request from the IRS, a signed, written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely CDP hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time after a request, the CDP hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–C6. Where must the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of that office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

* * * * *

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five-business-day notification period, the taxpayer foregoes the right to a CDP hearing under section 6320 with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the 30-day period that does not satisfy the requirements set forth in A–C1(ii)(A), (B), (C), (D) or (F) of this paragraph (c)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A–C1(iii) of this paragraph (c)(2). If the request for CDP hearing is untimely, either because the request was not submitted within the 30-day period or not perfected within the reasonable period provided, the taxpayer will be notified of the untimeliness of the request and offered an equivalent hearing. In such cases, the taxpayer may obtain an equivalent hearing without submitting an additional request. See paragraph (i) of this section.

* * * * *

(d) * * *

(2) * * *

A–D4. Prior involvement by an Appeals officer or employee includes participation or involvement in a matter (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period shown on the CDP Notice. Prior involvement exists only when the taxpayer, the tax and the tax period at issue in the CDP hearing also were at issue in the prior non-CDP matter, and the Appeals officer or employee actually participated in the prior matter.

* * * * *

A–D7. Except as provided in A–D8 of this paragraph (d)(2), a taxpayer who presents in the CDP hearing request relevant, non-frivolous reasons for disagreement with the NFTL filing will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to taxpayer's residence. A business taxpayer will ordinarily be offered an opportunity for a face-to-face conference at the Appeals office closest to the taxpayer's principal place of business. If that is not satisfactory to the taxpayer, the taxpayer will be given an opportunity for a hearing by telephone or by correspondence. In all cases, the Appeals officer or employee will review the case file, as described in A–F4 of paragraph (f)(2). If no face-to-face or telephonic conference is held, or other oral communication takes place, review of the documents in the case file, as described in A–F4 of paragraph (f)(2), will constitute the CDP hearing for purposes of section 6320(b).

Q–D8. In what circumstances will a face-to-face CDP conference not be granted?

A–D8. A taxpayer is not entitled to a face-to-face CDP conference at a location other than as provided in A–D7 of this paragraph (d)(2) and this A–D8. If all Appeals officers or employees at the location provided for in A–D7 of this paragraph (d)(2) have had prior involvement with the taxpayer as provided in A–D4 of this paragraph (d)(2), the taxpayer will not be offered a face-to-face conference at that location, unless the taxpayer elects to waive the requirement of section 6320(b)(3). The taxpayer will be offered a face-to-face conference at another Appeals office if Appeals would have offered the taxpayer a face-to-face conference at the location provided in A–D7 of this paragraph (d)(2), but for the disqualification of all Appeals officers or employees at that location. A face-to-face CDP conference concerning a taxpayer's underlying liability will not be granted if the request for a hearing or other taxpayer communication indicates that the taxpayer wishes only to raise irrelevant or frivolous issues concerning that liability. A face-to-face CDP conference concerning a collection alternative, such as an installment agreement or an offer to compromise liability, will not be granted unless other taxpayers would be eligible for the alternative in similar circumstances. For example, because the IRS does not consider offers to compromise from taxpayers who have not filed required returns or have not made certain required deposits of tax, as set forth in Form 656, ''Offer in Compromise,'' no face-to-face conference will be granted to a taxpayer who wishes to make an offer to compromise but has not fulfilled those obligations. Appeals in its discretion, however, may grant a face-to-face conference if Appeals determines that a face-to-face conference is appropriate to explain to the taxpayer the requirements for becoming eligible

for a collection alternative. In all cases, a taxpayer will be given an opportunity to demonstrate eligibility for a collection alternative and to become eligible for a collection alternative, in order to obtain a face-to-face conference. For purposes of determining whether a face-to-face conference will be granted, the determination of a taxpayer's eligibility for a collection alternative is made without regard to the taxpayer's ability to pay the unpaid tax. A face-to-face conference need not be granted if the taxpayer does not provide the required information set forth in A–C1(ii)(E) of paragraph (c)(2). See also A–C1(iii) of paragraph (c)(2).

(3) *Examples.* The following examples illustrate the principles of this paragraph (d):

Example 1. Individual A timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual A. Appeals employee B previously conducted a CDP hearing regarding a proposed levy for individual A's 1998 income tax liability. Because employee B's only prior involvement with individual A's 1998 income tax liability was in connection with a section 6330 CDP hearing, employee B may conduct the CDP hearing under section 6320 involving the NFTL filed for the 1998 income tax liability.

Example 2. Individual C timely requests a CDP hearing concerning a NFTL filed with respect to the 1998 income tax liability assessed against individual C. Appeals employee D previously conducted a Collection Appeals Program (CAP) hearing regarding a NFTL filed with respect to individual C's 1998 income tax liability. Because employee D's prior involvement with individual C's 1998 income tax liability was in connection with a non-CDP hearing, employee D may not conduct the CDP hearing under section 6320 unless individual C waives the requirement that the hearing will be conducted by an Appeals officer or employee who has had no prior involvement with respect to individual C's 1998 income tax liability.

Example 3. Same facts as in *Example 2*, except that the prior CAP hearing only involved individual C's 1997 income tax liability and employment tax liabilities for 1998 reported on Form 941, ''Employer's Quarterly Federal Tax Return.'' Employee D would not be considered to have prior involvement because the prior CAP hearing in which she participated did not involve individual C's 1998 income tax liability.

Example 4. Appeals employee F is assigned to a CDP hearing concerning a NFTL filed with respect to a trust fund recovery penalty (TFRP) assessed pursuant to section 6672 against individual E. Appeals employee F participated in a prior CAP hearing involving individual E's 1999 income tax liability, and participated in a CAP hearing involving the employment taxes of business entity X, which incurred the employment tax liability to which the TFRP assessed against individual E relates. Appeals employee F would not be considered to have prior involvement because the prior CAP hearings in which he participated did not directly involve the TFRP assessed against individual E.

Example 5. Appeals employee G is assigned to a CDP hearing concerning a NFTL filed with respect to a TFRP assessed pursuant to section 6672 against individual H. In preparing for the CDP hearing, Appeals employee G reviews the Appeals case file concerning the prior CAP hearing involving the TFRP assessed pursuant to section 6672 against individual H. Appeals employee G is not deemed to have participated in the previous CAP hearing involving the TFRP assessed against individual H by such review.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals will determine the timeliness of any request for a CDP hearing that is made by a taxpayer. Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, Appeals is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure with respect to the filing of the NFTL have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the underlying liability, including a liability reported on a self-filed return, for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute the tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

* * * * *

(3) * * *

A–E2. A taxpayer is entitled to challenge the existence or amount of the underlying liability for any tax period specified on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency determined in the notice of deficiency. An opportunity to dispute the underlying liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability. An opportunity for a conference with Appeals prior to the assessment of a tax subject to deficiency procedures is not a prior opportunity for this purpose.

* * * * *

A–E6. Collection alternatives include, for example, a proposal to withdraw the NFTL in circumstances that will facilitate the collection of the tax liability, subordination of the NFTL, discharge of the NFTL from specific property, an installment agreement, an offer to compromise, the posting of a bond, or the substitution of other assets. A collection alternative is not available unless the alternative would be available to other taxpayers in similar circumstances. See A–D8 of paragraph (d)(2).

* * * * *

A–E7. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the underlying liability for any tax period specified in the CDP Notice may be challenged only if the taxpayer did not have a prior opportunity to dispute the tax liability. If the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer had a prior opportunity to dispute the existence or amount of the underlying tax liability.

* * * * *

A–E11. No. An Appeals officer may consider the existence and amount of the underlying tax liability as a part of the CDP hearing only if the taxpayer did not receive a statutory notice of deficiency for the tax liability in question or otherwise have a prior opportunity to dispute the tax liability. Similarly, an Appeals officer may not consider any other issue if the issue was raised and considered at a previous hearing under section 6330 or in any other previous administrative or judicial proceeding in which the person seeking to raise the issue meaningfully participated. In the Appeals officer's sole discretion, however, the Appeals officer may consider the existence or amount of the underlying tax liability,

or such other precluded issues, at the same time as the CDP hearing. Any determination, however, made by the Appeals officer with respect to such a precluded issue shall not be treated as part of the Notice of Determination issued by the Appeals officer and will not be subject to any judicial review. Because any decisions made by the Appeals officer on such precluded issues are not properly a part of the CDP hearing, such decisions are not required to appear in the Notice of Determination issued following the hearing. Even if a decision concerning such precluded issues is referred to in the Notice of Determination, it is not reviewable by the Tax Court because the precluded issue is not properly part of the CDP hearing.

* * * * *

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within the 30-day period commencing the day after the date of the Notice of Determination to the Tax Court.

(2) * * *

A–F1. Subject to the jurisdictional limitations described in A–F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court.

* * * * *

Q–F3. What issue or issues may the taxpayer raise before the Tax Court if the taxpayer disagrees with the Notice of Determination?

A–F3. In seeking Tax Court review of a Notice of Determination, the taxpayer can only ask the court to consider an issue, including a challenge to the underlying tax liability, that was properly raised in the taxpayer's CDP hearing. An issue is not properly raised if the taxpayer fails to request consideration of the issue by Appeals, or if consideration is requested but the taxpayer fails to present to Appeals any evidence with respect to that issue after being given a reasonable opportunity to present such evidence.

Q–F4. What is the administrative record for purposes of Tax Court review?

A–F4. The case file, including the taxpayer's request for hearing, any other written communications and information from the taxpayer or the taxpayer's authorized representative submitted in connection with the CDP hearing, notes made by an Appeals officer or employee of any oral communications with the taxpayer or the taxpayer's authorized representative, memoranda created by the Appeals officer or employee in connection with the CDP hearing, and any other documents or materials relied upon by the Appeals officer or employee in making the determination under section 6330(c)(3), will constitute the record in the Tax Court review of the Notice of Determination issued by Appeals.

(g) * * *

(3) * * *

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the Tax Court, plus 90 days.

* * * * *

(h) * * *

(2) * * *

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one CDP hearing under section 6320 with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court.

(i) * * *

(2) * * *

Q–I1. What must a taxpayer do to obtain an equivalent hearing?

A–I1. (i) A request for an equivalent hearing must be made in writing. A written request in any form that requests an equivalent hearing will be acceptable if it includes the information and signature required in A-I1(ii) of this paragraph (i)(2).

(ii) The request must be dated and must include the following:

(A) The taxpayer's name, address, daytime telephone number (if any), and taxpayer identification number (e.g., SSN, ITIN or EIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer is requesting an equivalent hearing with Appeals concerning the filing of the NFTL.

(E) The reason or reasons why the taxpayer disagrees with the filing of the NFTL.

(F) The signature of the taxpayer or the taxpayer's authorized representative.

(iii) The taxpayer must perfect any timely written request for an equivalent hearing that does not satisfy the requirements set forth in A–I1(ii) of this paragraph (i)(2) within a reasonable period of time after a request from the IRS. If the requirements are not satisfied within a reasonable period of time, the taxpayer's equivalent hearing request will be denied.

(iv) The taxpayer must affirm any timely written request for an equivalent hearing that is signed or alleged to have been signed on the taxpayer's behalf by the taxpayer's spouse or other unauthorized representative, and that otherwise meets the requirements set forth in A–I1(ii) of this paragraph (i)(2), by filing, within a reasonable period of time after a request from the IRS, a signed written affirmation that the request was originally submitted on the taxpayer's behalf. If the affirmation is filed within a reasonable period of time after a request, the timely equivalent hearing request will be considered timely with respect to the non-signing taxpayer. If the affirmation is not filed within a reasonable period of time, the equivalent hearing request will be denied with respect to the non-signing taxpayer.

* * * * *

Q–I6. Will a taxpayer be able to obtain Tax Court review of a decision made by Appeals with respect to an equivalent hearing?

* * * * *

Q–I7. When must a taxpayer request an equivalent hearing with respect to a CDP Notice issued under section 6320?

A–I7. A taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL. This period is slightly different from the period for submitting a written request for an equivalent hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, a taxpayer must submit a written request for an equivalent hearing within the one-year period commencing the day after the date of the CDP Notice issued under section 6330.

Q–I8. How will the timeliness of a taxpayer's written request for an equivalent hearing be determined?

A–I8. The rules and regulations under section 7502 and section 7503 will apply to determine the timeliness of the

taxpayer's request for an equivalent hearing, if properly transmitted and addressed as provided in A–I10 of this paragraph (i)(2).

Q–I9. Is the one-year period within which a taxpayer must make a request for an equivalent hearing extended because the taxpayer resides outside the United States?

A–I9. No. All taxpayers who want an equivalent hearing concerning the filing of the NFTL must request the hearing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL.

Q–I10. Where must the written request for an equivalent hearing be sent?

A–I10. The written request for an equivalent hearing must be sent, or hand delivered (if permitted), to the IRS office and address as directed on the CDP Notice. If the address of the issuing office does not appear on the CDP Notice, the taxpayer should obtain the address of the office to which the written request should be sent or hand delivered by calling, toll-free, 1–800–829–1040 and providing the taxpayer's identification number (e.g., SSN, ITIN or EIN).

Q–I11. What will happen if the taxpayer does not request an equivalent hearing in writing within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL?

A–I11. If the taxpayer does not request an equivalent hearing with Appeals within the one-year period commencing the day after the end of the five-business-day period following the filing of the NFTL, the taxpayer foregoes the right to an equivalent hearing with respect to the unpaid tax and tax periods shown on the CDP Notice. A written request submitted within the one-year period that does not satisfy the requirements set forth in A–I1(ii) of this paragraph (i)(2) is considered timely if the request is perfected within a reasonable period of time pursuant to A–I1(iii) of this paragraph (i)(2). If a request for equivalent hearing is untimely, either because the request was not submitted within the one-year period or not perfected within the reasonable period provided, the equivalent hearing request will be denied. The taxpayer, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program or any successor program.

(j) *Effective date.* This section is applicable on or after November 16, 2006, with respect to requests made for CDP hearings or equivalent hearings on or after November 16, 2006.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: October 6, 2006.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E6–17140 Filed 10–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–051A]

RIN 1218–AC16

Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Direct final rule.

SUMMARY: On September 15, 2004, the Occupational Safety and Health Administration (OSHA) promulgated a new fire protection rule for shipyard employment that incorporated by reference 19 National Fire Protection Association (NFPA) standards. Ten of those NFPA standards had been updated by NFPA since the fire protection rule was proposed and an additional NFPA standard has been updated since the final rule was published. In this direct final rule, OSHA is replacing the references to those eleven NFPA standards by adding the most recent versions.

DATES: This direct final rule will become effective on January 16, 2007 unless significant adverse comment is received by November 16, 2006. If significant adverse comment is received, OSHA will publish a timely withdrawal of this rule. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of January 16, 2007.

Comments to this direct final rule must be submitted by the following dates: Hard copy: Your comments must be submitted (postmarked or sent) by November 16, 2006. Electronic transmission and facsimile: Your comments must be sent by November 16, 2006.

ADDRESSES: You may submit written comments to this direct final rule—identified by docket number S–051A or RIN number 1218–AC16—by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov.* Follow the instructions for submitting comments on OSHA's web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery, and courier service: Submit three copies to the OSHA Docket Office, Docket No. S–051A, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

FOR FURTHER INFORMATION: For general information and press inquiries, contact Kevin Ropp, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Jim Maddux, Director, Office of Maritime, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2086 or fax (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov.*

For access to the docket to read background documents or comments received, go to *http://dockets.osha.gov.* Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Request for Comment
II. Direct Final Rulemaking
III. Discussion of Changes
IV. Legal Considerations
V. Final Economic Analysis and Regulatory Flexibility Act Certification
VI. Paperwork Reduction Act

VII. Federalism
VIII. State Plan States
IX. Unfunded Mandates Reform Act
X. List of Subjects for 29 CFR Part 1915
XI. Authority and Signature

I. Request for Comment

OSHA requests comments on all issues related to this action. OSHA also welcomes comments on the Agency's findings that there are not negative economic or other regulatory impacts of this action on the regulated community. If OSHA receives no significant adverse comment, OSHA will publish a **Federal Register** document confirming the effective date of this direct final rule and withdrawing the companion proposed rule published in the Proposed Rules section of today's **Federal Register**. Such confirmation may include minor stylistic or technical changes to the document.

Comments received will be posted without change to *http://dockets.osha.gov,* including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

II. Direct Final Rulemaking

In direct final rulemaking, an agency publishes a final rule in the **Federal Register** with a statement that the rule will go into effect unless a significant adverse comment is received within a specified period of time. An identical proposed rule is often published at the same time. If no significant adverse comments are submitted, the rule goes into effect. If any significant adverse comments are received, the agency withdraws the direct final rule and treats the comments as responses to the proposed rule. Direct final rulemaking is used where an agency anticipates that a rule will not be controversial. Examples include minor substantive changes to regulations updating incorporated references to the latest edition of national consensus standards, and direct incorporations of mandates from new legislation.

For purposes of this direct final rulemaking, a significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach. In determining whether a comment necessitates withdrawal of the direct final rule, OSHA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. A comment recommending additional changes will not be considered a significant adverse comment unless the comment states why the direct final rule would be ineffective without the addition. If a timely significant adverse comment is received, the Agency will publish a notice of significant adverse comment in the **Federal Register** withdrawing this direct final rule no later than January 16, 2007.

OSHA is also publishing today a companion proposed rule, which is identical to this direct final rule. In the event the direct final rule is withdrawn because of significant adverse comment, OSHA intends to proceed with the rulemaking by addressing the comment(s) and publishing a new final rule. If a significant adverse comment is received regarding certain revisions included in this direct final rule, but not others, OSHA may (1) Finalize those changes that did not receive significant adverse comment, and (2) conduct further rulemaking under the companion proposed rule for the changes that did receive significant adverse comment. The comment period for the proposed rule runs concurrently with that of the direct final rule. Any comments received under the companion proposed rule will be treated as comments regarding the direct final rule. Likewise, significant adverse comments submitted to the direct final rule will be considered as comments to the companion proposed rule; the Agency will consider such comments in developing a subsequent final rule.

OSHA has determined that the subject of this rulemaking is suitable for direct final rulemaking. This direct final rule will enhance OSHA's fire protection in shipyard standard by adding the most current NFPA consensus standards to the OSHA standard. OSHA's changes will benefit the safety of employees by requiring employers to comply with the newer standards, which may be even more protective than the older standards. Furthermore, OSHA's changes will not result in additional compliance costs. OSHA does not anticipate any objections to this direct final rule.

III. Discussion of Changes

On September 15, 2004, OSHA issued a new fire protection final rule for shipyard employment that incorporated by reference 19 National Fire Protection Association (NFPA) standards (69 FR 55667). The purpose of this direct final rule is to add ten recently updated NFPA standards to the standard for fire protection in shipyard employment. The 10 NFPA standards are new versions of 11 NFPA standards currently in OSHA's standard. The reason there are only 10 is because the NFPA combined two of its standards, NFPA 11–1998 and NFPA 11A–1999, into the NFPA 11–2002 standard covering foam fire extinguishing systems. This direct final rule replaces the 11 older NFPA standards with the 10 newer NFPA standards.

Table I lists the older NFPA standards incorporated by reference in the fire protection in shipyard employment standard, and lists the sections in the standard in which these NFPA standards are referenced. It also lists the latest versions of the NFPA standards to be added to the standard for fire protection in shipyard employment through this direct final rule.

TABLE I

Section	Paragraph	NFPA standards incorporated by reference in 29 CFR part 1915	Latest version of NFPA standard
1915.505 Fire Response.	(e)(3)(v)	NFPA 1981–1997 Standard on Open-Circuit Self-Contained Breathing Apparatus for the Fire Service.	NFPA 1981–2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services (Ex. 1–1).
1915.507 Land-side fire protection systems.	(b)(1), (b)(2)	NFPA 10–1998 Standard for Portable Fire Extinguishers.	NFPA 10–2002 Standard for Portable Fire Extinguishers (Ex. 1–2).
	(c)(6)	NFPA 72–1999 National Fire Alarm Code	NFPA 72–2002 National Fire Alarm Code (Ex. 1–3).
	(b)(2), (d)(1)	NFPA 14–2000 Standard for the Installation of Standpipe, Private Hydrant, and Hose Systems.	NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems (Ex. 1–4).
	(d)(2)	NFPA 13–1999 Standard for the Installation of Sprinkler Systems.	NFPA 13–2002 Standard for the Installation of Sprinkler Systems (Ex.1–5).

TABLE I—Continued

Section	Paragraph	NFPA standards incorporated by reference in 29 CFR part 1915	Latest version of NFPA standard
		NFPA 750–2000 Standard on Water Mist Fire Protection Systems.	NFPA 750–2003 Standard on Water Mist Fire Protection Systems (Ex. 1–6).
	(d)(3)	NFPA 11–1998 Standard for Low-Expansion Foam.	NFPA 11–2005 Standard for Low-, Medium-, and High-Expansion Foam (Ex. 1–7).
		NFPA 11A–1999 Standard for Medium- and High-Expansion Foam Systems.	
	(d)(5)	NFPA 12A–1997 Standard on Halon 1301 Fire Extinguishing Systems.	NFPA 12A–2004 Standard on Halon 1301 Fire Extinguishing Systems (Ex. 1–8).
		NFPA 2001–2000 Standard on Clean Agent Fire Extinguishing Systems.	NFPA 2001–2004 Standard on Clean Agent Fire Extinguishing Systems (Ex. 1–9).
		NFPA 12–2000 Standard on Carbon Dioxide Extinguishing Systems.	NFPA 12–2005 Standard on Carbon Dioxide Extinguishing Systems.

OSHA has examined the latest versions of the NFPA standards and compared them with the versions currently referenced in the fire protection in shipyard employment standard. OSHA finds that the latest versions are as protective on the whole, and in certain ways more protective, than the earlier versions of the same NFPA standards. The latest versions are also more comprehensive than the earlier versions and reflect recent developments in safety technology, equipment, and testing. The changes to the NFPA standards include:

• *Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services*—NFPA 1981–2002 has been revised to add requirements for heads-up displays (HUD) that provide the user of a self-contained breathing apparatus (SCBA) with information regarding breathing air supply status, alert the user when the breathing air supply is at 50 percent of full, and, where the HUD is powered by battery power source, warn the user when the HUD only has 2 more hours of battery power. The updated standard also includes new requirements for a Rapid Intervention Company/Crew (RIC) Universal Air Connection (UAC) (or RIC UAC) on all new SCBA. The RIC UAC is a standard connection device that allows a rescue breathing air supply to be joined to the SCBA of a victim, fire fighter or other emergency services responder to replenish the breathing air in the SCBA breathing air cylinder when the victim cannot be rapidly moved to a safe atmosphere. (Ex. 1–1).

• *Standard for Low-, Medium-, and High-Expansion Foam*—NFPA 11–2005 has been revised to combine the older NFPA 11 low-expansion foam system requirements with the older NFPA 11A medium- and high-expansion foam provisions. (Ex.1–7).

• *Standard for Portable Fire Extinguishers*—NFPA 10–2002 has been revised to prohibit ''extended wand-type'' discharge devices on Class K—fire extinguishers manufactured after 01/01/2002. (Class ''K'' extinguishers are used for ''combustible cooking media'' fire hazards in commercial kitchens.) The new version of NFPA 10 allows the use of electronic equipment to monitor the status of portable fire extinguishers an alternative that may be more effective and efficient than manual monitoring (Ex. 1–2).

• *National Fire Alarm Code*—NFPA 72–2002 has been updated to revise fire alarm power supply requirements, to improve the survivability of fire alarms from attack by fire, and to improve the ''supervising stations'' used in larger fire alarm systems. (Ex. 1–3).

• *Standard for the Installation of Sprinkler Systems*—NFPA 13–2002 has been updated to add the sprinkler installation requirements found in other NFPA standards, to include criteria for solid shelf storage areas, and to make the standard easier for users to reference. (Ex. 1–5).

The remaining NFPA standards have been updated to make minor technical and editorial changes and to improve readability by formatting them into a standard layout.

IV. Legal Considerations

The purpose of the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, is ''to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.'' 29 U.S.C. 651(b). To achieve this goal, Congress authorized the Secretary of Labor to promulgate and enforce occupational safety and health standards. 29 U.S.C. 655(b), 654(b). A safety or health standard is a standard ''which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment.'' 29 U.S.C. 652(8). A standard is reasonably necessary or appropriate within the meaning of section 652(8) if, among other things, a significant risk of material harm exists in the workplace and the proposed standard would substantially reduce or eliminate that workplace risk.

This direct final rule, which addresses the hazard of fire in shipyard employment, may enhance the employee protections currently in place through incorporated references to NFPA consensus standards. In its final rule on fire protection in shipyard employment, OSHA discussed injuries and fatalities that may result from fire hazards in shipyards, and the potential for reducing those injuries and deaths through adoption of the final standard (69 FR 55668, 55669, 55699). Because this direct final rule simply updates the NFPA standards incorporated by reference in OSHA's fire protection standard to their most recent versions, it is unnecessary to determine significant risk, or the extent to which the direct final rule would reduce that risk, as would typically be required by *Industrial Union Department, AFL-CIO* v. *American Petroleum Institute,* 448 U.S. 607 (1980).

V. Final Economic Analysis and Regulatory Flexibility Act Certification

This action is not economically significant within the context of Executive Order 12866, or a ''major rule'' under the Unfunded Mandates Reform Act or Section 801 of the Small Business Regulatory Enforcement Fairness Act. The rulemaking would impose no additional costs on any private or public sector entity, and does not meet any of the criteria for an economically significant or major rule specified by the Executive Order or relevant statutes.

This action simply includes updated references to NFPA standards. The Agency compared the older versions of

the NFPA standards with the new versions via side-by-side analyses. Based on our findings, the Agency concludes that incorporating the new versions of the NFPA standards will not impose any additional costs on any private or public sector entity.

Furthermore, because the rule imposes no additional costs on employers, OSHA certifies that it would not have a significant impact on a substantial number of small entities. Accordingly, the Agency need not prepare a final regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

VI. Paperwork Reduction Act

This action does not impose new information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–30.

VII. Federalism

OSHA has reviewed this direct final rule in accordance with the Executive Order on Federalism (Executive Order 13132, 64 FR 43255, August 10, 1999), which requires that agencies, to the extent possible, refrain from limiting State policy options, consult with States prior to taking any actions that would restrict State policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Executive Order 13132 provides for preemption of State law only if there is a clear congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the OSH Act (29 U.S.C. 651 *et seq.*) expresses Congress' intent to preempt State laws where OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption on issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement (State-Plan State). 29 U.S.C. 667. Occupational safety and health standards developed by such State-Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Subject to these requirements, State-Plan States are free to develop and enforce under State law their own requirements for safety and health standards.

This direct final rule complies with Executive Order 13132. As Congress has expressed a clear intent for OSHA standards to preempt State job safety and health rules in areas addressed by OSHA standards in States without OSHA-approved State Plans, this rule limits State policy options in the same manner as all OSHA standards. In States with OSHA-approved State Plans, this action does not significantly limit State policy options.

VIII. State Plan States

The 26 States or U.S. Territories with their own OSHA approved occupational safety and health plans must revise their standards to reflect this final standard or show OSHA why there is no need for action, *e.g.*, because an existing state standard covering this area is already ''at least as effective as'' the new Federal standard. The state standard must be at least as effective as this final standard, must be applicable to both the private and public (State and local government employees) sectors, and must be completed within six months of the publication date of this final Federal rule.

Currently only five States (California, Minnesota, Oregon, Vermont, and Washington) with their own State plans cover private sector onshore maritime activities in whole or in part. Federal OSHA enforces maritime standards offshore in all States and provides onshore coverage of maritime activities in Federal OSHA States, in the five States above, to the extent not covered by them, and in all the other State Plan States: Alaska, Arizona, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Nevada, New Jersey (plan covers only State and local government employees), New Mexico, New York (plan covers only State and local government employees), North Carolina, Puerto Rico, South Carolina, Tennessee, Utah, Virginia, Virgin Islands (plan covers only territorial government employees), and Wyoming.

IX. Unfunded Mandates Reform Act

This direct final rule has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA). 2 U.S.C. 1501 *et seq.* For the purposes of the UMRA, the Agency certifies that this direct final rule does not impose any Federal mandate that may result in increased expenditures by State, local, or tribal governments, or increased expenditures by the private sector, of more than $100 million in any year.

X. List of Subjects for 29 CFR Part 1915

Fire protection, Hazardous substances, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Shipyards, and Vessels.

XI. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2002, and 29 CFR Part 1911.

Signed at Washington, DC, this 5th day of October, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

Amendments To Standards

■ OSHA amends Part 1915 of Title 29 of the Code of Federal Regulations as set forth below:

■ 1. The authority citation for Part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; 29 CFR Part 1911.

■ 2. Amend § 1915.5 to revise paragraphs (d)(4)(i), (vi) through (x), and (xiii) through (xviii) and by removing paragaraph (d)(4)(xix) to read as follows:

§ 1915.5 Incorporation by reference.

* * * * *

(d) * * *

(4) * * *

(i) NFPA 1981–2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services, IBR approved for 1915.505(e)(3)(v).

* * * * *

(vi) NFPA 10–2002 Standard for Portable Fire Extinguishers, IBR approved for §§ 1915.507(b)(1) and (b)(2).

(vii) NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems, IBR approved for §§ 1915.507(b)(2) and (d)(1).

(viii) NFPA 72–2002 National Fire Alarm Code, IBR approved for § 1915.507(c)(6).

(ix) NFPA 13–2002 Standard for the Installation of Sprinkler Systems, IBR approved for § 1915.507(d)(2).

(x) NFPA 750–2003 Standard on Water Mist Fire Protection Systems, IBR approved for § 1915.507(d)(2).

* * * * *

(xiii) NFPA 11–2005 Standard for Low-, Medium-, and High-Expansion

Foam, IBR approved for § 1915.507(d)(3).

(xiv) NFPA 17–2002, Standard for Dry Chemical Extinguishing Systems, IBR approved for § 1915.507(d)(4).

(xv) NFPA 12–2005, Standard on Carbon Dioxide Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xvi) NFPA 12A–2004, Standard on Halon 1301 Fire Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xvii) NFPA 2001–2004, Standard on Clean Agent Fire Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xviii) NFPA 1403–2002, Standard on Live Fire Training Evolutions, IBR approved for § 1915.508(d)(8).

■ 3. Amend § 1915.505 to revise paragraph (e)(3)(v) to read as follows:

§ 1915.505 Fire response.

* * * * *

(e) * * *

(3) * * *

(v) Provide only SCBA that meet the requirements of NFPA 1981–2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services (incorporated by reference, see § 1915.5); and

* * * * *

■ 4. Amend § 1915.507 to revise paragraphs (b)(1), (b)(2), (c)(6), (d)(1), (d)(2), (d)(3), and (d)(5) to read as follows:

§ 1915.507 Land-side fire protection system.

* * * * *

(b) * * *

(1) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10–2002 Standard for Portable Fire Extinguishers (incorporated by reference, see § 1915.5).

(2) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10–2002 (incorporated by reference, see § 1915.5), as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific recommendations in NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems (incorporated by reference, see § 1915.5).

(c) * * *

(6) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72–2002 National Fire Alarm Code (incorporated by reference, see § 1915.5)

(d) * * *

(1) Standpipe and hose systems according to NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems (incorporated by reference, see § 1915.5);

(2) Automatic sprinkler systems according to NFPA 25–2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, (incorporated by reference, see § 1915.5), and either (i) NFPA 13–2002 Standard for the Installation of Sprinkler Systems (incorporated by reference, see § 1915.5), or (ii) NFPA 750–2003 Standard on Water Mist Fire Protection Systems (incorporated by reference, see § 1915.5);

(3) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15–2001 Standard for Water Spray Fixed Systems for Fire Protection (incorporated by reference, see § 1915.5) and NFPA 11–2005 Standard for Low-, Medium-, and High-Expansion Foam (incorporated by reference, see § 1915.5);

* * * * *

(5) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12–2005 Standard on Carbon Dioxide Extinguishing Systems (incorporated by reference, see § 1915.5); NFPA 12A–2004 Standard on Halon 1301 Fire Extinguishing Systems (incorporated by reference, see § 1915.5); and NFPA 2001–2004 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see § 1915.5).

[FR Doc. E6–17124 Filed 10–16–06; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 224

RIN–1510–AB08

Federal Process Agents of Surety Corporations

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service (FMS) is revising its regulation governing the appointment of Federal process agents of surety corporations to allow for the appointment of a state official as a process agent. We are also revising the regulation by removing the requirement that all surety corporations appoint a process agent in the District of Columbia, regardless of whether the surety corporation provides bonds in the District of Columbia. Finally, we are updating obsolete contact information and references in the regulation.

DATES: This rule is effective on October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Rose M. Miller, Manager, Surety Bond Branch, at 202–874–6850 or *rose.miller@fms.treas.gov;* or William Erle, Senior Counsel, at 202–874–6680 or *william.erle@fms.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

31 U.S.C. 9306 was amended November 29, 1999 to allow a surety corporation to appoint a State official as its process agent. This means that surety corporations conducting business in more than one judicial district in a state can appoint a State official to receive service of process on the corporation, thereby saving surety corporations from having to appoint an agent in each judicial district of that State. Prior to the amendment, a surety did not have the option of appointing a State official as its process agent to satisfy the service of process requirement. This revised rule makes the regulation at 31 CFR Part 224 consistent with 31 U.S.C. 9306 by providing for the appointment of State officials as process agents.

An additional change relates to the requirement currently found in 31 CFR 224.2(a)(3) which requires that an agent be appointed for service of process ''in the District of Columbia where the bond is returnable and filed.'' This requirement applies to all surety corporations whether or not the corporation contemplates the writing of bonds in favor of the United States to be undertaken within the District of Columbia. Requiring companies to appoint an agent in the District of Columbia, when they are not incorporated in the District of Columbia, and do not write bonds in the District of Columbia, is an unnecessary financial burden on the companies. FMS can see no benefit to the Federal government in maintaining this requirement since, as a matter of practice, Federal bonds are not necessarily returnable and filed in the District of Columbia. The revised rule eliminates this requirement.

The sample power of attorney form currently found in 31 CFR 224.4 is replaced with a reference to the Surety Bond Branch Web page. Moving the form to the Web page will allow the sample power of attorney form to be updated more easily. Also, it will provide surety corporations with easy access to an electronic version of the form.

Finally, 31 CFR 224.6 currently states that a listing of the divisional offices of the court in each judicial district may be obtained from the Surety Bond Branch, Financial Management Service, U.S. Department of the Treasury. This information is available directly from the U.S. Courts. Therefore, the regulation is revised to provide the contact information for the U.S. Courts.

Regulatory Analyses

Administrative Procedure Act. We did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), a rule is exempt from notice and comment rulemaking requirements if the agency finds that notice and public comment are unnecessary or contrary to the public interest. This rule reflects provisions that are already in effect as a matter of law. The changes will have no substantive effect on the public; therefore, it is unnecessary to publish an NPRM. Likewise, for the same reasons a delayed effective date is not required.

Clarity of Regulations. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comment on how to make this rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Executive Order 12866. FMS has determined that this regulation is not a significant action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 224

Bonding, Insurance, Insurance companies, Sureties, Surety bonds, Process agents.

■ For the reasons set forth in the preamble, 31 CFR part 224 is revised as follows:

PART 224—FEDERAL PROCESS AGENTS OF SURETY CORPORATIONS

Sec.

224.1 What does this part cover?
224.2 Definitions.
224.3 When may a surety corporation provide a bond without appointing a process agent?
224.4 When must a surety corporation appoint a process agent?
224.5 Who may a surety corporation appoint to be a process agent?
224.6 Where can I find a sample power of attorney form?
224.7 Where can I find a list of United States district court offices?
224.8 When must a surety corporation appoint a new process agent?

Authority: 31 U.S.C. 9306 and 9307.

§ 224.1 What does this part cover?

This part provides guidance on when a surety corporation must appoint a service of process agent and how the surety corporation complies with this requirement.

§ 224.2 Definitions.

For purposes of this regulation:

(a) *Principal* means the person or entity required to provide a surety bond.

(b) *Process agent* means a resident agent for service of process.

(c) *State* means a State, the District of Columbia, or a territory or possession of the United States.

§ 224.3 When may a surety corporation provide a bond without appointing a process agent?

A surety corporation may provide a bond without appointing a process agent when the State where the bond is filed, the State where the principal resides, and the State where the surety corporation is incorporated are the same.

§ 224.4 When must a surety corporation appoint a process agent?

A surety corporation must appoint a process agent when either the State where the bond is filed or the State where the principal resides is different from the State where the surety corporation is incorporated. In such a case, the surety corporation must appoint a process agent in each such State that is different from the State where the surety is incorporated.

§ 224.5 Who may a surety corporation appoint to be a process agent?

A surety corporation may appoint either of the following as process agent—(a) An official of the State who is authorized or appointed under the law of that jurisdiction to receive service of process on the surety corporation; or

(b) An individual who resides in the jurisdiction of the district court for the district in which a surety bond is filed and who is appointed by the surety corporation by means of a power of attorney. A certified copy of the power of attorney must be filed with the clerk of the district court for the district in which a surety bond is to be provided. In addition, the surety corporation must provide the clerk of the United States District Court at the main office in each judicial district with the required number of authenticated copies of the power of attorney for each divisional office of the court within that judicial district.

§ 224.6 Where can I find a sample power of attorney form?

The Surety Bond Branch provides a sample form on its Web page located at: *http://www.fms.treas.gov/c570.* While use of the sample form is not required, any power of attorney provided should be substantially the same as the sample form.

§ 224.7 Where can I find a list of United States district court offices?

A list of the divisional offices of the court in each judicial district may be obtained from the Federal Judiciary, U.S. Courts Web page at *http://www.uscourts.gov*, or by mail by writing to: Office of Public Affairs, Administrative Office of the U.S. Courts, Washington, DC 20544.

§ 224.8 When must a surety corporation appoint a new process agent?

The surety corporation must immediately appoint a new process agent whenever the authority of a process agent is terminated by reason of revocation, disability, removal from the district, or any other cause.

Dated: October 11, 2006.

Kenneth R. Papaj,

Commissioner.

[FR Doc. E6–17225 Filed 10–16–06; 8:45 am]

BILLING CODE 4810–35–P

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 256

RIN 1510–AA52

Obtaining Payments From the Judgment Fund and Under Private Relief Bills

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: The Financial Management Service (FMS) is revising 31 CFR part 256, governing how Federal government agencies (agencies) obtain payments from the Judgment Fund, 31 U.S.C. 1304, and how individuals obtain payments under private relief acts. The revision reflects current rules and procedures; it does not include any substantive changes.

DATES: This rule is effective on October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Kevin McIntrye, Manager, Judgment Fund Branch, at (202) 874–6664 or *Kevin.McIntrye@fms.treas.gov*; or William J. Erle, Senior Counsel, at (202) 874–6680 or *William.Erle@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

Background

FMS is the Treasury Department bureau that administers and certifies payments from the Judgment Fund, 31 U.S.C. 1304. Pursuant to Public Law 104–53 (November 19, 1995), the Judgment Fund function was transferred from the General Accounting Office (GAO), now known as the Government Accountability Office, to the Office of Management and Budget (OMB). OMB delegated this responsibility to the Treasury Department.

We are revising 31 CFR part 256, in part, to clarify that Judgment Fund payment requests are no longer submitted to GAO, to remove the reference to obsolete processing requirements for awards that are above $100,000 (this statutory ceiling was removed in 1977 by Public Law 95–26), to provide guidance on the kinds of awards that are properly payable from the Judgment Fund, and to provide information on the current procedures for obtaining such payments. This rule seeks to provide guidance to agencies government-wide that submit requests for payments from the Judgment Fund for paying litigative and administrative awards. Additionally, it provides direction to private attorneys regarding filing requirements necessary to preserve the right to interest.

Regulatory Analyses

Administrative Procedure Act. This rule reflects provisions that are already in effect as a matter of law and provides information on the current procedures for obtaining payments from the Judgment Fund. Under 5 U.S.C. 553(b)(B), this rule is exempt from notice and comment rulemaking requirements on the grounds that the amendments are non-substantive and further delay in making these amendments is unnecessary and contrary to the public interest. Likewise, for the same reasons a delayed effective date is not required.

Clarity of Regulations. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comment on how to make this rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rule are clear; or (3) whether there is something else we could do to make this rule easier to understand.

Executive Order 12866. FMS has determined that this rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

Regulatory Flexibility Act. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 256

Awards, Claims, Costs, Interest, Judgment Fund, Judgments, Tort claims.

■ For the reasons stated in the preamble, part 256 of title 31 of the Code of Federal Regulations is revised as follows:

PART 256—OBTAINING PAYMENTS FROM THE JUDGMENT FUND AND UNDER PRIVATE RELIEF BILLS

Subpart A—General Information

Sec.
256.0 What does this part cover?
256.1 What is Treasury's role in paying awards and settlements from the Judgment Fund?
256.2 Where can I find more information about, and forms for, Judgment Fund payments?

Subpart B—Requesting Payments

256.10 Who may request payment from the Judgment Fund?
256.11 How do agencies request payments?
256.12 What supporting documentation must agencies submit to FMS when requesting a payment from the Judgment Fund?
256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?
256.14 What happens if I submit an incomplete request for payment?

Subpart C—Debt Collection

256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?
256.21 Are Judgment Fund payments offset to collect administrative debts?
256.22 How does FMS set off an award under 31 U.S.C. 3728?

Subpart D—Interest and Litigation Costs

256.30 When does the Judgment Fund pay interest?
256.31 How does FMS compute interest on payments?
256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?
256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?
256.34 Does the Judgment Fund pay all litigation costs?

Subpart E—Reimbursements to the Judgment Fund

256.40 When must an agency reimburse the Judgment Fund?
256.41 When is reimbursement due for CDA and No FEAR payments?

Subpart F—Additional Provisions

256.50 How does FMS process back pay awards?
256.51 Does FMS report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?
256.52 How does FMS issue a payment?
256.53 How does the submitting agency know when payment is made?
256.54 What happens if FMS denies a request for payment?

Subpart G—Private Relief Bills

256.60 How do I get paid for a Private Relief Bill?

Authority: 31 U.S.C. 1304, 3728; 41 U.S.C. 612; 5 U.S.C. 2301 note.

Subpart A—General Information

§ 256.0 What does this part cover?

This part applies to payments made by the U.S. Department of the Treasury (Treasury) pursuant to the Judgment Fund statute, 31 U.S.C. 1304.

§ 256.1 What is Treasury's role in paying awards and settlements from the Judgment Fund?

(a) The Judgment Fund is a permanent, indefinite appropriation which is available to pay many judicially and administratively ordered monetary awards against the United States. In addition, amounts owed under compromise agreements negotiated by the U.S. Department of Justice in settlement of claims arising under actual or imminent litigation are normally paid from the Judgment Fund, if a judgment on the merits would be payable from the Judgment Fund. Treasury's Financial Management Service (FMS) certifies payments from the Judgment Fund when the following four tests have been met: (1) Awards or settlements are final; (2) Awards or settlements are monetary; (3) One of the authorities specified in 31 U.S.C. 1304(a)(3) provides for payment of the award or settlement; and (4) Payment may not legally be made from any other source of funds.

(b) Additionally, FMS requires that requests for payment identify the statute that forms the basis of the underlying claim. The award or settlement must comply with the statutory and regulatory requirements that authorize the award or settlement. For example, interest is payable on Judgment Fund awards only if there is an express statutory provision, contractual

agreement or constitutional waiver of sovereign immunity authorizing the assessment of interest against the United States. Also, a tort under the Federal Tort Claims Act (FTCA) is payable from the Judgment Fund only when the award amount exceeds $2,500 (for administrative awards) and is in compliance with the regulatory requirements at 28 CFR part 14.

§ 256.2 Where can I find more information about, and forms for, Judgment Fund payments?

Detailed information related to Judgment Fund payments, including copies of all forms, can be found in the Treasury Financial Manual (TFM), Volume I, Part 6, Chapter 3100. The TFM is available on the Judgment Fund Web site at *http://www.fms.treas.gov/judgefund*. Contact information for the Judgment Fund Branch is also available on the Web site.

Subpart B—Requesting Payments

§ 256.10 Who may request payment from the Judgment Fund?

(a) Court judgments and settlements of litigation. The Department of Justice must normally submit the request for payment from the Judgment Fund. Agencies that have independent litigating authority may submit a request for payment themselves if the Department of Justice is not responsible for the case.

(b) Administrative awards. The program agency that is authorized to approve the award must submit the request for payment.

§ 256.11 How do agencies request payments?

Agencies must submit requests for payments from the Judgment Fund on FMS's Judgment Fund payment request forms or by using other approved methods as provided for on the Judgment Fund Web site at *http://www.fms.treas.gov/judgefund*. FMS provides forms and detailed information about Judgment Fund payments in the TFM, Volume I, Part 6, Chapter 3100. The TFM is also available on the Judgment Fund Web site. The submitting agency must complete and sign all required Judgment Fund forms and must attach all required supporting documents.

§ 256.12 What supporting documentation must agencies submit to FMS when requesting a payment from the Judgment Fund?

(a) All payments. The submitting agency must submit a copy of the judgment or settlement agreement, as applicable, in addition to the request for payment from the Judgment Fund. The request for payment must be on the appropriate Judgment Fund payment request forms.

(b) Awards to minors. For awards to claimants that are minors, the submitting agency must include in its submission to FMS documentation establishing that the payee, if different from the claimant, is legally authorized to act on behalf of the claimant. Documentation of court approvals (Federal, State, or foreign) that are legally required for payment must be submitted along with the request for payment from the Judgment Fund. State law typically specifies when money awards to minors require the appointment of a guardian. Agencies must list the appropriate controlling state law citation on the payment request forms.

(c) Awards of costs. For awards of costs, the submitting agency must include a copy of the ''bill of costs'' or the Court's order awarding costs. Only those items expressly enumerated under the cost statute, 28 U.S.C. 1920, or other governing statute specific to the award, are payable from the Judgment Fund.

(d) Payments to multiple claimants/payees in a single award. For awards where multiple payees are to receive separate payments, the submitting agency must complete separate Judgment Fund Vouchers for Payment for each payee. When there are multiple claimants in an administrative tort matter, each claimant's award must independently exceed the mandatory $2,500 threshold in order for payment to be made from the Judgment Fund. A claimant's threshold can be satisfied by combining amounts awarded for personal and property damage under the FTCA.

(e) Awards of back pay. For awards of back pay where the judgment does not specifically state the principal amounts to be paid and withholdings to be made, the submitting agency must include a spreadsheet indicating precisely which amounts are allocable to net pay, deductions, and interest.

§ 256.13 Are agencies required to supply a taxpayer identification number (TIN) when submitting a request for payment?

Yes, agencies must include a valid TIN on all requests for payments, unless the situation meets one of the exceptions listed in the FMS TIN Policy, which may be found on the FMS Web site at: *http://www.fms.treas.gov/tinpolicy/regulations.html.* For an individual, the TIN is the Social Security Number. For a business, the TIN is the Employer Identification Number issued by IRS. The TIN provided must be for the party entitled to the payment, whether or not that party is the payee. Failure to include a required TIN results in an incomplete request for payment.

§ 256.14 What happens if I submit an incomplete request for payment?

FMS may return, without action, any request for payment that is incomplete. If a request for payment is returned for lack of necessary information, the submitting agency may resubmit the request for payment once all the required information is available.

Subpart C—Debt Collection

§ 256.20 How does an agency indicate that a debt is to be offset from a Judgment Fund payment?

The submitting agency must identify on the appropriate Judgment Fund form any known debt owed to the United States that FMS is expected to collect by setoff against the award. Such a debt will be offset pursuant to the provisions of 31 U.S.C. 3728.

§ 256.21 Are Judgment Fund payments offset to collect administrative debts?

Yes, separate and apart from its role as administrator of the Judgment Fund, FMS, in its capacity as disbursing official for the executive branch, offsets Judgment Fund payments to collect delinquent, nontax Federal debts through the Treasury Offset Program (TOP). This rule applies only to the setoff of Judgment Fund payments prior to payment certification, pursuant to 31 U.S.C. 3728, and not to disbursing official offsets pursuant to other authorities. (See 31 CFR 285.5 for requirements for disbursing official offset of past-due delinquent, nontax debts pursuant to the authority set forth in 31 U.S.C. 3716.)

§ 256.22 How does FMS set off an award under 31 U.S.C. 3728?

The setoff statute establishes a two-step process to collect debts that are owed to the United States. If an agency notifies FMS of a debt for which a court has issued a judgment against a debtor in favor of the United States, or for which the IRS has issued a tax levy pursuant to 26 U.S.C. 6331, then FMS will automatically set off the debt from the payment. If the debt owed to the United States has not been judicially determined, then FMS must notify the claimant of the debt and request the debtor's consent to a setoff. If the debtor consents, then FMS will set off the debt. If the debtor does not consent, then FMS will withhold from payment an amount equal to the debt. FMS also may withhold an amount sufficient to pay

the cost of litigating the debt to judgment. FMS then will consult with the underlying agency and the Department of Justice regarding the necessity for a civil action to reduce the debt to judgment. If litigation proceeds and is successful, FMS will set off the debt. If the suit is unsuccessful, FMS will pay the withheld amount with interest accruing from the date when payment would have been made.

Subpart D—Interest and Litigation Costs

§ 256.30 When does the Judgment Fund pay interest?

Interest is paid when it is ordered in the judgment pursuant to a statutory, contractual or constitutional waiver of sovereign immunity. Such waivers may include interest as set forth under 41 U.S.C. 611 (Contract Disputes Act), 5 U.S.C. 5596 (Back Pay Act), or Title VII, 42 U.S.C. 2000e–16 (Civil Rights Act of 1991). In addition, post-judgment interest is paid on awards eligible for interest under 31 U.S.C. 1304(b) (unsuccessful appeal by the Government).

§ 256.31 How does FMS compute interest on payments?

FMS computes interest according to the terms of the statute that waives sovereign immunity for interest to be awarded against the Federal government. The statute that allows interest must be cited on the appropriate Judgment Fund form.

§ 256.32 What documentation must be submitted to the Judgment Fund Branch to preserve the right to seek interest under 31 U.S.C. 1304(b) in a case where the government has taken an appeal?

31 U.S.C. 1304(b) specifies that a ''transcript of the judgment'' must be filed with the Secretary of the Treasury. This means that a copy of the judgment must be filed with the Judgment Fund Branch for interest to accrue on a judgment of a federal district court, the Court of Appeals for the Federal Circuit, or the United States Court of Federal Claims. By practice, the successful plaintiff files a copy of the judgment. Whoever submits the judgment should include a cover letter explaining that it is being submitted to preserve interest rights under 31 U.S.C. 1304. A copy of the judgment and cover letter must be sent to the Financial Management Service, Judgment Fund Branch, at the address indicated on the Judgment Fund Web site at *http://www.fms.treas.gov/judgefund.*

§ 256.33 For what period of time is interest computed under 31 U.S.C. 1304(b)?

Interest is computed from the date that FMS receives the copy of the judgment until the date preceding the appellate court's affirmative ruling. If the United States files a Notice of Appeal which it later withdraws, interest is paid on the award through the date before the withdrawal of the Notice of Appeal.

§ 256.34 Does the Judgment Fund pay all litigation costs?

FMS certifies for payment only those costs that are enumerated in the cost statute, 28 U.S.C. 1920, or as set forth under a statute that specifically governs payment of the award.

Subpart E—Reimbursements to the Judgment Fund

§ 256.40 When must an agency reimburse the Judgment Fund?

Agencies are required to reimburse the Judgment Fund for payments made pursuant to the Contract Disputes Act (CDA), 41 U.S.C. 612, and payments made pursuant to the Notification and Federal Employees Antidiscrimination and Retaliation Act of 2002 (No FEAR), 5 U.S.C. 2301 note. The TFM, available on the Judgment Fund Web site at *http://www.fms.treas.gov/judgefund*, contains more information about how FMS bills agencies and collects such reimbursements.

§ 256.41 When is reimbursement due for CDA and No FEAR payments?

Reimbursement for a CDA or No FEAR payment should be made promptly upon notification from FMS of the amount due. If the agency is unable to timely reimburse FMS, the agency must contact FMS to establish a reimbursement plan. Under Office of Personnel Management (OPM) regulations, No FEAR reimbursements or payment reimbursement plans must be made within 45 days of the request for reimbursement. See 5 CFR part 724. Agencies that do not meet this requirement will be listed on FMS's public Web site.

Subpart F—Additional Provisions

§ 256.50 How does FMS process back pay awards?

(a) The submitting agency may request one of two methods to process back pay awards. One method has three parts. The first part is a payment of net back pay (and interest if authorized), which is sent to the plaintiff or to the plaintiff's attorney, as directed by the submitting agency. The second part is a payment to the agency of deductions from the net back pay. The third part is a payment of attorney fees, which is sent directly to the attorney.

(b) Under the second method, FMS pays the entire back pay award to the agency out of whose actions the claim arose. The agency then issues amounts representing back pay (and interest if authorized) to the plaintiff and retains amounts representing deductions. FMS pays the attorney fees directly to the attorney.

§ 256.51 Does FMS report Judgment Fund payments to the IRS as income to the payee on IRS Form 1099?

No, FMS does not report Judgment Fund payments as potential taxable income to the IRS. FMS does not have sufficient information about the payment to determine if a Form 1099 must be issued or to prepare such a form when required. To the extent any Form 1099 needs to be issued, it is the responsibility of the agency submitting the payment request to do so.

§ 256.52 How does FMS issue a payment?

Pursuant to 31 CFR part 208, Judgment Fund payments are to be made by electronic funds transfer (EFT). FMS will issue an electronic payment to the payee's account as specified on the appropriate Judgment Fund form. If a submitting agency determines that a waiver (in accordance with 31 CFR part 208) to the requirement for payment by EFT is appropriate, FMS will issue a payment by check. The Voucher for Payment must direct payment to the payee designated in the judgment or settlement agreement.

§ 256.53 How does the submitting agency know when payment is made?

FMS will e-mail the agency contact when payment is disbursed, if the agency contact has provided an email address on the appropriate Judgment Fund form. Also, FMS maintains an on-line payment status system that the submitting agency can access to determine the status of a payment. The payment reporting system can be accessed from the Judgment Fund Web site at *http://www.fms.treas.gov/judgefund.*

§ 256.54 What happens if FMS denies a request for payment?

FMS must deny any request for payment that fails to satisfy the requirements of 31 U.S.C. 1304. The submitting agency may request reconsideration of a payment denial. The submitting agency must provide an explanation of how the request for payment meets the four tests contained in section 256.1 of this part. If applicable, requests for reconsideration

must contain a reference to the agency's program authority and include specific funding provisions that pertain to the program activity that resulted in the claim. If, upon reconsideration, FMS determines that payment from the Judgment Fund is appropriate, and the agency has already made payment to the plaintiff or claimant, FMS will reimburse the agency from the Judgment Fund.

Subpart G—Private Relief Bills

§ 256.60 How do I get paid for a Private Relief Bill?

You may apply for payment by sending a request letter along with supporting documentation, to include a copy of the private relief act and proof of your identity, to the address specified on the FMS Web site at *http://www.fms.treas.gov/privaterelief.*

Dated: October 11, 2006.

Kenneth R. Papaj,

Commissioner.

[FR Doc. E6–17229 Filed 10–16–06; 8:45 am]

BILLING CODE 4810–35–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[R10–OAR–2005–TR–0001; FRL–8230–8]

Announcement of the Delegation of Partial Administrative Authority for Implementation of Federal Implementation Plan for the Umatilla Indian Reservation to the Confederated Tribes of the Umatilla Indian Reservation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Delegation of authority; technical amendment.

SUMMARY: This action announces that on August 21, 2006, EPA Region 10 and the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) entered into a Partial Delegation of Administrative Authority to carry out certain day-to-day activities associated with administration of the Federal Implementation Plan for the Umatilla Indian Reservation (Umatilla FIP). A note of this partial delegation is being added to the Umatilla FIP.

DATES: The partial delegation of administrative authority was effective on August 21, 2006. The date of delegation can be found in the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: EPA has established a docket for this action under Docket ID No. R10–OAR–2005–TR–0001. The delegation agreement and other docket materials are available electronically in EDOCKET, EPA's electronic public docket and comment system, found at *www.regulations.gov* or in hard copy from Steve Body at EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Seattle, Washington 98101, or via e-mail at *body.steve@epa.gov.* Additional information may also be obtained from the CTUIR by contacting Dr. John Cox, Air Quality Project Coordinator, Environmental Science and Technology Program, P.O. Box 638, Pendleton, Oregon 97801.

FOR FURTHER INFORMATION CONTACT: Steve Body at telephone number: (206) 553–0782, e-mail address: *body.steve@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: The purpose of this action is to announce that on August 21, 2006, EPA Region 10, delegated partial administrative authority for implementation of certain provisions of the Umatilla FIP to the CTUIR. *See* 40 CFR part 49, subpart M, section 11011 through 11040, as authorized by 40 CFR 49.122 of the Federal Air Rules for Reservations, (FARR), 40 CFR part 49, subpart C.

I. Authority To Delegate

Federal regulation 40 CFR 49.122 provides EPA authority to delegate to Indian Tribes, partial administrative authority to administer provisions of the Federal Air Rules for Reservations (FARR), 40 CFR part 49, subpart C. Tribes must submit a request to the Regional Administrator that meets the requirements of 40 CFR 49.122.

II. Partial Delegation of Administrative Authority

On August 21, 2006, EPA entered into an ''Agreement for Partial Delegation of the Federal Implementation Plan for the Umatilla Indian Reservation by the United States Environmental Protection Agency, Region 10, to the Confederated Tribes of the Umatilla Indian.'' The Delegation Agreement provides authority for the CTUIR to administer the following rules that are part of the Federal Implementation Plan for the Nez Perce Tribe of Idaho, 40 CFR 49.11011 through 49.11040: 49.11020(a) Section 49.123 General provisions; 49.11020(g) Section 49.131 General rule for open burning; 49.11020(h) Section 49.132 Rule for general open burning permits; 49.11020(i) Section 49.133 Rule for agricultural burning permits; 49.11020(j) Section 49.134 Rule for forestry and silvicultural burning permits; and 49.11020(l) Section 49.137 Rule for air pollution episodes.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA is merely informing the public of partial delegation of administrative authority to the CTUIR and making a technical amendment to the Code of Federal Regulations (CFR) by adding a note announcing the partial delegation. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Moreover, since today's action does not create any new regulatory requirements, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3).

III. Statutory and Executive Order Reviews

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 makes a technical amendment and gives notice of a partial delegation of administrative authority. 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.*). This rule 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).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 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.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations

that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.'' Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the regulation. EPA has concluded that this rule may have tribal implications. EPA's action fulfills a requirement to publish a notice announcing partial delegation of administrative authority to the CTUIR and noting the partial delegation in the CFR. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt tribal law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

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). This technical amendment merely notes that partial delegation of administrative authority to the CTUIR is in effect. 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.

This action does not involve technical standards; 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.*). The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 18, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 49

Administrative practice and procedure, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 28, 2006.

Ronald A. Kreizenbeck,

Acting Regional Administrator, Region 10.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 49—[AMENDED]

■ 1. The authority citation for Part 49 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart M—[Amended]

■ 2. Section 49.11020 is amended by adding a note to the end of the section to read as follows:

§ 49.11020 Federally-promulgated regulations and Federal implementation plans.

* * * * *

Note to § 49.11020: EPA entered into a Partial Delegation of Administrative Authority Agreement with the Confederated Tribes of the Umatilla Indian Reservation on August 21, 2006 for the rules listed in paragraphs (a), (g), (h), (i), (j) and (l) of this section.

[FR Doc. E6–17223 Filed 10–16–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2006–0834; FRL–8230–9]

Regulatory Impact Analysis for the Review of the Particulate Matter National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of documents.

SUMMARY: On October 6, 2006, EPA released the Regulatory Impact Analysis (RIA) for the revised particulate matter national ambient air quality standards. This RIA provides EPA's estimates of the range of the monetized human health benefits, control costs, and net benefits associated with meeting the revised suite of standards for fine particles ($PM_{2.5}$) that are published elsewhere in this issue of the **Federal Register**, as well as for meeting a more stringent alternative. The final rule established a 24-hour standard of 35 g/m^3 and retained the annual standard of 15 g/m^3. The EPA also promulgated a final decision to retain the current 24-hour PM_{10} standards and to revoke the current annual PM_{10} standards, in order to maintain protection against the health and welfare effects of thoracic coarse particles ($PM_{10-2.5}$). Data and modeling limitations preclude EPA from assessing the costs and benefits of retaining the existing PM_{10} 24-hour standard.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Evans, Mail Code C439–02, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919) 541–5488, e-mail: *evans.ron@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2006–0834. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket and

Information Center in the EPA Docket Center (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/.* The EPA also has posted the RIA on its Web site for particle pollution and the revised PM standards at *http://www.epa.gov/pm.* **Note:** The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

In setting primary ambient air quality standards, EPA's responsibility under the law is to establish standards that protect public health. The Clean Air Act (CAA) requires EPA, for each criteria pollutant, to set a standard that protects public health with ''an adequate margin of safety.'' As interpreted by the Agency and the courts, the CAA requires EPA to base this decision on health considerations; economic factors cannot be considered.

Although EPA cannot consider costs in setting the primary air quality standards, consideration of costs and benefits is essential to the efficient implementation of these standards. The impacts of cost, benefits, and efficiency are considered by the States when making decisions regarding what timelines, strategies, and policies make the most sense.

This $PM_{2.5}$ NAAQS RIA is focused on development and analyses of illustrative control strategies to meet alternative suites of standards in 2020, the latest year by which the CAA generally requires full attainment of the new standards. Because the States are ultimately responsible for implementing strategies to meet the revised standards, the RIA provides insights and analysis of a limited number of illustrative control strategies that States might adopt to meet the revised standards. These strategies are subject to a number of important assumptions, uncertainties and limitations, which EPA documents in the relevant portions of the analysis.

The EPA presents this analysis pursuant to Executive Order 12866 and the guidelines of OMB Circular A–4.[1] These documents present guidelines for EPA to assess the incremental benefits and costs of the selected regulatory approach as well as one less stringent, and one more stringent, option. In this RIA, the 1997 standards represent the less stringent option, and the alternative suite of standards including a tighter annual standard of 14 g/m^3 together with the revised 24-hour standard of 35 g/m^3 represents the more stringent option.

Dated: October 5, 2006.

Jeffrey S. Clarke,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. E6–17011 Filed 10–16–06; 8:45 am]

BILLING CODE 6560–50–P

[1] For a copy of these requirements, see:*http://www.whitehouse.gov/OMB/inforeg/eo12866.pdf and http://www.whitehouse.gov/omb/circulars/a004/a–4.html.*

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7467]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Division Director reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, FEMA, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by the other Federal, State, or regional entities.

The changed BFEs are in accordance with 44 CFR 65.4. *National Environmental Policy Act.* This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Mitigation Division Director for the FEMA certifies that this rule is exempt

from the requirements of the Regulatory Flexibility Act because modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification. This interim rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12988.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

Alabama:			
Houston	City of Dothan (05–04–A105P).	May 18, 2006; May 25, 2006; *Dothan Eagle*.	The Honorable Pat Thomas, Mayor, City of Dothan, P.O. Box 2128, Dothan, Alabama 36302.
Jefferson	City of Trussville (06–04–B139P).	June 22, 2006; June 29, 2006; *Birmingham News*.	The Honorable Eugene A. Melton, Mayor, City of Trussville, Trussville City Hall, 131 Main Street, Trussville, Alabama 35173.
Jefferson	Unincorporated Areas of Jefferson County (06–04–B139P).	June 22, 2006; June 29, 2006; *Birmingham News*.	The Honorable Larry Langford, President, Jefferson County Commission, Jefferson County Courthouse, Room 240, 716 Richard Arrington Jr. Boulevard North, Birmingham, Alabama 35203.
Jefferson	Unincorporated Areas of Jefferson County (06–04–B748P).	July 27, 2006; August 3, 2006; *Birmingham News*.	The Honorable Larry Langford, President, Jefferson County Commission, Jefferson County Courthouse, Room 240, 716 Richard Arrington Jr., Boulevard North, Birmingham, Alabama 35203.
Madison	City of Huntsville (06–04–136P).	July 14, 2006; July 21, 2006; *Madison County Record*.	The Honorable Loretta Spencer, Mayor, City of Huntsville, P.O. Box 308, Huntsville, Alabama 35804.
Mobile	Unincorporated Areas of Mobile County (06–04–A402P).	July 20, 2006; July 27, 2006; *Mobile Press Register*.	Mr. John Pafenbach, County Administrator, Mobile County, 205 Government Street, Mobile, Alabama 36644.
Shelby	City of Pelham (06–04–B342P).	July 12, 2006; July 19, 2006; *Shelby County Reporter*.	The Honorable Bobby Hayes, Mayor, City of Pelham, P.O. Box 1419, Pelham, Alabama 35124.
Tuscaloosa	City of North Port (05–04–1187P).	January 18, 2006; January 25, 2006; *The Northport Gazette*.	The Honorable Harvey Fretwell, Mayor, City of Northport, City Hall, 3500 McFarland Boulevard, Northport, Alabama 35476.
Tuscaloosa	City of North Port (05–04–A392P).	May 17, 2006; May 24, 2006; *The Northport Gazette*.	The Honorable Harvey Fretwell, Mayor, City of Northport, City Hall, 3500 McFarland Boulevard, Northport, Alabama 35476.
Tuscaloosa	City of Tuscaloosa (05–04–A392P).	May 17, 2006; May 24, 2006; *The Northport Gazette*.	The Honorable Walter Maddox, Mayor, City of Tuscaloosa, P.O. Box 2089, Tuscaloosa, Alabama 35403–2089
Tuscaloosa	Unincorporated Areas of Tuscaloosa County (05–04–1187P).	January, 18 2006; January 25, 2006; *The Northport Gazette*.	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, Alabama 35401.
Tuscaloosa	Unincorporated Areas of Tuscaloosa County, (05–04–A392P)).	May 17, 2006; May 24, 2006; *The Northport Gazette*.	The Honorable W. Hardy McCollum, Chairman, Tuscaloosa County Board of Commissioners, 714 Greensboro Avenue, Tuscaloosa, Alabama 35401.
Benton	City of Rogers (05–06–0683P).	June 21, 2006; June 28, 2006; *Arkansas Democrat Gazette, Rogers Hometown News*.	The Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar Street, Rogers, Arkansas 72756.
Benton	City of Rogers (05–06–A559P).	August 30, 2006; September 6, 2006; *Arkansas Democrat Gazette, Rogers Hometown News*.	The Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar Street, Rogers, Arkansas 72756.
Crawford	City of Van Buren (05–06–A486P).	May 17, 2006; May 24, 2006; *Press Argus Courier*.	The Honorable John Riggs, Mayor, City of Van Buren, 1003 Broadway, Van Buren, Arkansas 72956.
Pulaski	City of Jacksonville (05–06–1464P).	December 21, 2005; December 28, 2005; *Jacksonville Patriot*.	The Honorable Tommy Swaim, Mayor, City of Jacksonville, One Municipal Drive, Jacksonville, Arkansas 72076.
Pulaski	City of North Little Rock (05–06–1777).	April 13, 2006; April 20, 2006; *North Little Rock Times*.	The Honorable Patrick H. Hays, Mayor, City of North Little Rock, 300 Main Street, North Little Rock, Arkansas 72114.

Pulaski	Unincorporated Areas of Pulaski County (05–06–1777P).	April 13, 2006; April 20, 2006; *North Little Rock Times*.	The Honorable Floyd G. Villines, Pulaski County Judge, Pulaski County Courthouse 201 South Broadway, Little Rock, Arkansas 72201.
Coconino	City of Flagstaff (05–09–1103P).	December 8, 2005; December 15, 2005; *Arizona Daily Sun*.	The Honorable Joseph Donaldson, Mayor, City of Flagstaff, 211 West Aspen Avenue, Flagstaff, Arizona 86001.
Maricopa	City of Avondale (06–09–B472P).	July 13, 2006; July 20, 2006; *Arizona Business Gazette*.	The Honorable Marie Lopez-Rogers, Mayor, City of Avondale, 525 North Central Avenue, Avondale, Arizona 85323.
Maricopa	City of Chandler (04–09–1562P).	November 10, 2005; November 17, 2005; *Arizona Business Gazette*.	The Honorable Boyd W. Dunn, Mayor, City of Chandler, P.O. Box 4008, Mail Stop 603, Chandler, Arizona 85244–4008.
Maricopa	City of Glendale (06–09–B380P).	July 20, 2006; July 27, 2006; *Arizona Business Gazette*.	The Honorable Elaine Scrugss, Mayor, City of Glendale, 5850 West Glendale Avenue, Glendale, Arizona 85301
Maricopa	Town of Gilbert (04–09–1717P).	May 11, 2006; May 18, 2006; *Arizona Business Gazette*.	The Honorable Steve Berman, Mayor, Town of Gilbert, 50 West Civic Center Drive, Gilbert, Arizona 85296
Maricopa	Town of Gilbert (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Steve Berman, Mayor, Town of Gilbert, 50 West Civic Center Drive, Gilbert, Arizona 85296
Maricopa	City of Goodyear (05–09–0791P).	June 15, 2006; June 22, 2006; *Arizona Business Gazette*.	The Honorable Jim Cavanaugh, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, Arizona 85338
Maricopa	City of Litchfield Park (05–09–0791P).	June 15, 2006; June 22, 2006; *Arizona Business Gazette*.	The Honorable J. Woodfin Thomas, Mayor, City of Litchfield Park, 214 West Wigman Boulevard, Litchfield Park, Arizona 85340
Maricopa	Town of Paradise Valley (05–09–1284P).	December 8, 2005; December 15, 2005; *Arizona Business Gazette*.	The Honorable Ron Clarke, Mayor, Town of Paradise, 6401 East Lincoln Drive, Paradise Valley, Arizona 85253
Maricopa	City of Peoria (06–09–B380P).	July 20, 2006; July 27, 2006; *Arizona Business Gazette*.	The Honorable John Keegan, Mayor, City of Peoria, 8410 West Monroe Street, Peoria, Arizona 85345
Maricopa	City of Phoenix (05–09–1284P).	December 8, 2005; December 15, 2005; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611
Maricopa	City of Phoenix (06–09–B520P).	April 27, 2006; May 4, 2006; *Arizona Business Gazette*.	The Honorable Phil Gordon, Mayor, City of Phoenix, 200 West Washington Street, 11th Floor, Phoenix, Arizona 85003–1611
Maricopa	Town of Queen Creek (04–09–1717P).	May 11, 2006; May 18, 2006; *Arizona Business Gazette*.	The Honorable Mark Schnepf, Mayor, Town of Queen Creek, P.O. Box 650, Queen Creek, Arizona 85242
Maricopa	Town of Queen Creek (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Mark Schnepf, Mayor, Town of Queen Creek, P.O. Box 650, Queen Creek, Arizona 85242
Maricopa	Unincorporated Areas of Maricopa County (04–09–1717P).	May 11, 2006; May 18, 2006; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003
Maricopa	Unincorporated Areas of Maricopa County (05–09–0394P).	May 18, 2006; May 25, 2006; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003
Maricopa	Unincorporated Areas of Maricopa County (06–09–B885X).	June 29, 2006; July 6, 2006; *Arizona Business Gazette*.	The Honorable Max Wilson, Chairman, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, Arizona 85003
Pima	City of Tucson (05–09–A160P).	February 16, 2006; February 23, 2006; *Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726
Pima	City of Tucson (05–09–A090P).	March 30, 2006; April 6, 2006; *Daily Territorial*.	The Honorable Bob Walkup, Mayor, City of Tucson, P.O. Box 27210, Tucson, Arizona 85726
Pima	Unincorporated Areas of Pima County (05–09–0847P).	December 8, 2005; December 15, 2005; *Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County, Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701
Pima	Unincorporated Areas of Pima County (05–09–A160P).	February 16, 2006; February 23, 2006; *Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County, Board of Supervisors, 130 West Congress Street, 11th Floor, Tucson, Arizona 85701
Pima	Unincorporated Areas of Pima County (05–09–A090P).	March 30, 2006; April 6, 2006; *Daily Territorial*.	The Honorable Sharon Bronson, Chair, Pima County, Board of Supervisors, 130 West Congress, 11th Floor, Tucson, Arizona 85701
Pinal	Unincorporated Areas of Pinal County (05–09–A319P).	February 8, 2006; February 15, 2006; *Copper Basin News*.	The Honorable Sandie Smith, Chair, Pinal County, Board of Supervisors, P.O. Box 827, Florence, Arizona 85232
Pinal	Unincorporated Areas of Pinal County (06–09–B339P).	April 19, 2006; April 26, 2006; *Copper Basin News*.	The Honorable Sandie Smith, Chair, Pinal County, Board of Supervisors, P.O. Box 827, Florence, Arizona 85232
California:.			

Marin	City of Novato (05–09–A080P).	January 11, 2006; January 18, 2006; *Novato Advance*.	The Honorable Carole D. Knutson, Mayor, City of Novato, 75 Rowland Way, Suite 200, Novato, California 94945–5054.
Merced	City of Atwater (05–09–0622P).	February 16, 2006; February 23, 2006; *Merced Sun-Star*.	The Honorable Rudy Trevino, Mayor, City of Atwater, 750 Bellevue Road, Atwater, California 95301.
Merced	Unincorporated Areas of Merced County (05–09–0622P).	February 16, 2006; February 23, 2006; *Merced Sun-Star*.	Mr. Demetrios O. Tatum, County Executive Officer, Merced County, 2222 M Street, Merced, California 95340.
Monterey	City of Marina (05–09–A506P).	May 11, 2006; May 18, 2006; *The Salinas Californian*.	The Honorable Ila Mettee-McCutchon, Mayor, City of Marina, 211 Hillcrest Avenue, Marina, California 93933.
Placer	City of Roseville (05–09–1257P).	June 21, 2006; June 28, 2006; *Press Tribune*.	The Honorable Gina Garbolino, Mayor, City of Roseville, 311 Vernon Street, Roseville, California 95678.
Riverside	City of La Quinta (04–09–1145P).	February 9, 2006; February 16, 2006; *Press Enterprise*.	The Honorable Donald Adolph, Mayor, City of La Quinta, P.O. Box 1504, La Quinta, California 92247–1504.
Riverside	City of Lake Elsinore (06–09–B090P).	June 15, 2006; June 22, 2006; *Press Enterprise*.	The Honorable Robert Magee, Mayor, City of Lake Elsinore, Administrative Office, City Hall, 130 South Main Street, Lake Elsinore, California 92530.
Riverside	City of Norco (04–09–1444P).	November 16, 2005; November 23, 2005; *Press Enterprise*.	Mr. Jeff Allred, City Manager, City of Norco, 2870 Clark Avenue, Norco, California 92860.
Riverside	City of San Jacinto (05–09–A244P).	February 16, 2006; February 23, 2006; *Press Enterprise*.	The Honorable Dale Stubblefield, Mayor, City of San Jacinto, 201 East Main Street, San Jacinto, California 92583.
Riverside	Unincorporated Areas of Riverside County (05–09–A213P).	February 8, 2006; February 15, 2006; *Press Enterprise*.	The Honorable Marion Ashley, Chairman, Riverside County Board of Supervisors, 4080 Lemon Street, Fifth Floor, Riverside, California 92501.
San Diego	City of San Diego (06–09–B001P).	March 16, 2006; March 23, 2006; *San Diego Daily Transcript* The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101..	
San Diego	City of San Diego (06–09–B048P).	May 18, 2006; May 25, 2006; *San Diego Daily Transcript*.	The Honorable Jerry Sanders, Mayor, City of San Diego, 202 C Street, 11th Floor, San Diego, California 92101.
San Diego	Unincorporated Areas of San Diego County (06–09–B14P).	August 3, 2006; August 10, 2006; *San Diego Daily Transcript*.	The Honorable Bill Horn, Chairman, San Diego County Board of Supervisors, 1600 Pacific Highway, San Diego, California 92123.
San Joaquin	City of Lathrop (06–09–B114P).	April 27, 2006; May 4, 2006; *The Record*.	The Honorable Apolinar Sangalang, Mayor, City of Lathrop, 16775 Howland Road, Suite 1, Lathrop, California 95330.
Santa Clara	City of Palo Alto (06–09–A606P).	July 19, 2006; July 26, 2006; *Palo Alto Weekly*.	The Honorable Judy Kleinberg, Mayor, City of Palo Alto, 250 Hamilton Avenue, Palo Alto, California 94301.
Santa Clara	City of San Jose (05–09–0938P).	March 16, 2006; March 23, 2006; *San Jose Mercury News*.	The Honorable Ron Gonzales, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, California 95113.
Santa Clara	City of San Jose (05–09–A216P).	March 23, 2006; March 30, 2006; *San Jose Mercury News*.	The Honorable Ron Gonzales, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, California 95113.
Santa Clara	City of San Jose (06–09–B378P).	July 19, 2006; July 26, 2006; *San Jose Mercury News*.	The Honorable Ron Gonzales, Mayor, City of San Jose, 200 East Santa Clara Street, San Jose, California 95113.
Santa Clara	City of Santa Clara (06–09–B378P).	July 19, 2006; July 26, 2006; *San Jose Mercury News*.	The Honorable Patricia Mahan, Mayor, City of Santa Clara, 1500 Warburton Avenue, Santa Clara, California 95050.
Ventura	City of Simi Valley (05–09–0780P).	February 2, 2006; February 9, 2006; *Ventura County Star*.	The Honorable Paul Miller, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.
Ventura	City of Simi Valley (06–09–A639P).	May 18, 2006; May 25, 2006; *Ventura County Star*.	The Honorable Paul Miller, Mayor, City of Simi Valley, 2929 Tapo Canyon Road, Simi Valley, California 93063.
Colorado:.			
Adams	City of Thornton (06–08–A627X).	December 16, 2005; December 23, 2005; *Eastern Colorado News*.	The Honorable Noel Busck, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, Colorado 80229.
Arapahoe	City of Centennial (05–08–0333P).	January 19, 2006; January 26, 2006; *Littleton Independent*.	The Honorable Randy Pye, Mayor, City of Centennial, 12503 East Euclid Drive, Suite 200, Centennial, Colorado 80111.

Arapahoe	Unincorporated Areas of Arapahoe County (05–08–0333P).	January 19, 2006; January 26, 2006; *Littleton Independent*.	The Honorable Lynn Myers, Chair, Arapahoe County Board of Commissioners, 5334 South Prince Street, Littleton, Colorado 80166–0001.
Douglas	Town of Parker (06–08–B014P).	March 30, 2006; April 6, 2006; *Douglas County News—Press*.	The Honorable David Caiano, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138 .
Douglas	Town of Parker (06–08–B338P).	August 10, 2006; August 17, 2006; *Douglas County News—Press*.	The Honorable David Caiano, Mayor, Town of Parker, 20120 East Mainstreet, Parker, Colorado 80138.
Douglas	Unincorporated Areas of Douglas County (06–08–B010P).	May 11, 2006; May 18, 2006; *Douglas County News—Press*.	The Honorable Walter Maxwell, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.
Douglas	Unincorporated Areas of Douglas County (06–08–B338P).	August 10, 2006; August 17, 2006; *Douglas County News—Press*.	The Honorable Walter Maxwell, Chairman, Douglas County Board of Commissioners, 100 Third Street, Castle Rock, Colorado 80104.
El Paso	City of Colorado Springs (06–08–B006P).	February 22, 2006; March 1, 2006; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.
El Paso	City of Colorado Springs (05–08–0586P).	March 1, 2006; March 8, 2006; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.
El Paso	City of Colorado Springs (04–08–0651P).	April 19, 2006; April 26, 2006; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.
El Paso	City of Colorado Springs (05–08–0575P).	May 17, 2006; May 24, 2006; *El Paso County News*.	The Honorable Lionel Rivera, Mayor, City of Colorado Springs, P.O. Box 1575, Colorado Springs, Colorado 80901.
El Paso	City of Fountain (05–08–0089P).	November 16, 2005; November 23, 2005; *El Paso County News*.	The Honorable Ken Barela, Mayor, City of Fountain, 116 South Main Street, Fountain, Colorado 80817.
El Paso	Unincorporated Areas of El Paso County (05–08–0089P).	November 16, 2005; November 23, 2005; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903.
El Paso	Unincorporated Areas of El Paso County (05–08–0586P).	March 1, 2006; March 8, 2006; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County, Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903.
El Paso	Unincorporated areas of El Paso County (04–08–0651P).	April 19, 2006; April 26, 2006; *El Paso County News*.	The Honorable Jim Bensberg, Chairman, El Paso County Board of Commissioners, 27 East Vermijo Avenue, Colorado Springs, Colorado 80903.
Jefferson	City of Arvada (05–08–0531P).	June 1, 2006; June 8, 2006; *Golden Transcript*.	The Honorable Ken Fellman, Mayor, City of Arvada, 8101 Ralston Road, Arvada, Colorado 80002.
Jefferson	City of Golden (06–08–A676P).	April 20, 2006; April 27, 2006; *Golden Transcript*.	The Honorable Charles J. Baroch, Mayor, City of Golden, 701 Ridge Road,Golden, Colorado 80403.
Jefferson	Unincorporated areas of Jefferson County (06–08–0531P).	June 1, 2006; June 8, 2006; *Golden Transcript*.	The Honorable Jim Congrove, Chairman, Jefferson County Board of Commissioners, 100 Jefferson County Parkway, Golden, Colorado 80419.
Jefferson	City of Westminster (04–08–0439P).	December 7, 2005; December 14, 2005; *Brighton Standard Blade*.	The Honorable Nancy McNally, Mayor, City of Westminster, 4800 West 92nd Avenue, Westminster, Colorado 80031.
Larimer	Unincorporated Areas of Larimer County (05–08–0587P).	April 20, 2006; April 27, 2006; Fort Collins Coloradoan.	The Honorable Kathay Rennels, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522.
Larimer	Town of Wellington (05–08–0379P).	December 22, 2005; December 29, 2005; *Fort Collins Coloradoan*.	The Honorable Larry Noel, Mayor, Town of Wellington, P.O. Box 127, Wellington, Colorado 80549.
Summit	Unincorporated Areas of Summit County (05–08–0618P).	June 16, 2006; June 23, 2006; *Summit County Journal*.	The Honorable Tom Long, Chairman, Summit County Board of Commissioners, P.O. Box 68, Breckenridge, Colorado 80424.
Weld	Town of Erie (05–08–0364P).	November 2, 2005; November 9, 2005; *Erie Review*.	The Honorable Andrew J. Moore, Mayor, Town of Erie, P.O. Box 750, Erie, Colorado 80516–0100.
Weld	Town of Pierce (06–08–B003P).	January 19, 2005; January 26, 2005; *Greeley Tribune*.	The Honorable Craig Cleveland, Mayor, Town Pierce, P.O. Box 57, Pierce, Colorado 80650.
Weld	Town of Severance (05–08–0378P).	March 16, 2006; March 23, 2006; *Greeley Tribune*.	The Honorable Pierre DeMilt Mayor, Town of Severance, P.O. Box 122, Severance, Colorado 80546.
Weld	Unincorporated Areas of Weld County (06–08–B003P).	January 19, 2005; January 26, 2005; *Greeley Tribune*.	The Honorable William Jerke Chairman, Weld County, Board of Commissioners, P.O. Box 758, Greeley, Colorado 80632.
Connecticut:			

Fairfield	Town of Greenwich (05–01–0751P).	February 16, 2006; February 23, 2006; *Greenwich Tine*.	The Honorable Jim Lash, First Selectman, Town of Greenwich, Town Hall, 101 Field Point Road, Greenwich, Connecticut 06830.
New Haven	Town of Madison (05–01–0798P).	August 24, 2006; August 31, 2006; *New Haven Register*.	The Honorable Thomas S. Scarpati Selectman, Town of Madison, Town Hall, Eight Campus Drive, Madison, Connecticut 06443.
New Castle	Unincorporated Areas of New Castle County (05–03–1010P).	April 14, 2006; April 21, 2006; *Newark Post*.	The Honorable Christopher A. Coons New Castle County Executive, New Castle County Gov't Center, 87 Reads Way, New Castle, Delaware 19720.
New Castle	Unincorporated Areas of New Castle County (05–03–0955P).	June 22, 2006; June 29, 2006; *News Journal*.	The Honorable Christopher A. Coons New Castle County Executive, New Castle County Gov't Center, 87 Reads Way, New Castle, Delaware 19720.
New Castle	Unincorporated Areas of New Castle County (05–03–0432P).	July 27, 2006; August 3, 2006; *News Journal*.	The Honorable Christopher A. Coons New Castle County Executive, New Castle County Gov't Center, 87 Reads Way, New Castle, Delaware 19720.
New Castle	Unincorporated Areas of New Castle County (05–03–0872P).	August 24, 2006; August 31, 2006; *News Journal*.	The Honorable Christopher A. Coons New Castle County Executive, New Castle County Gov't Center, 87 Reads Way, New Castle, Delaware 19720.
Sussex	Town of Dagsboro (05–03–0353P).	December 28, 2005; January 4, 2006; *Delaware Wave*.	The Honorable Brad Conner Mayor, Town of Dagsboro, P.O. Box 420, Dagsboro, Delaware 19939.
Sussex	Unincorporated Areas of Sussex County (05–03–0353P).	December 28, 2005; January 4, 2006; *Delaware Wave*.	Mr. Robert L. Stickels County Administrator, Sussex County, P.O. Box 589, Georgetown, Delaware 19947.
Florida:			
Duval	City of Jacksonville (05–04–1679P).	November 14, 2005; November 21, 2005; *Daily Record*.	The Honorable John Peyton Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Duval	City of Jacksonville (05–04–A260P).	May 15, 2006; May 22, 2006; *Daily Record*.	The Honorable John Peyton Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Duval	City of Jacksonville (06–04–B326P).	May 15, 2006; May 22, 2006; *Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Duval	City of Jacksonville (05–04–A259P).	June 19, 2006; June 26, 2006; *Daily Record*.	The Honorable John Peyton, Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Duval	City of Jacksonville (06–04–A703P).	June 19, 2006; June 26, 2006; *Daily Record*.	The Honorable John Peyton Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Duval	City of Jacksonville (06–04–BF40P).	August 21, 2006; August 28, 2006; *Daily Record*.	The Honorable John Peyton Mayor, City of Jacksonville, 117 West Duval Street, Jacksonville, Florida 32202–373.
Hillsborough	Unincorporated Areas of Hillsborough County (05–04–1536P).	August 24, 2006; August 31, 2006; *St. Petersburg Times*.	Ms. Patricia G. Bean County Administrator, Hillsborough County, County Center, 26th Floor, 601 East Kennedy Boulevard, Tampa, Florida 33602.
Lake	City of Mount Dora (05–04–3654P).	June 15, 2006; June 22, 2006; *Daily Commercial*.	The Honorable James E. Yatsuk Mayor, City of Mount Dora, P.O. Box 176, Mount Dora, Florida 32756.
Lake	Unincorporated Areas of Lake County (05–04–3652P).	June 16, 2006; June 23, 2006; *Daily Commercial*.	The Honorable Catherine C. Hanson Chairman, Lake County, Board of Commissioners, P.O. Box 7800, Tavares, Florida 32778.
Manatee	Unincorporated Areas of Manatee County (05–04–0296P).	March 16, 2006; March 23, 2006; *Bradenton Herald*.	The Honorable Joe McClash Chairman, Manatee County, Board of Commissioners, P.O. Box 1000, Bradenton, Florida 34206–1000.
Manatee	Unincorporated Areas of Manatee County (05–04–A393P).	May 18, 2006; May 25, 2006; *Bradenton Herald*.	The Honorable Joe McClash Chairman, Manatee County, Board of Commissioners, P.O. Box 1000, Bradenton, Florida 34206–1000.
Marion	Unincorporated Areas of Marion County (05–04–A236P).	June 22, 2006; June 29, 2006; *Ocala Star Banner*.	The Honorable Patrick G. Howard, County Administrator, Marion County, 601 Southeast 25th Avenue, Ocala, Florida 34471.
Miami Dade	City of Miami (06–04–BL20P).	July 20, 2006; July 27, 2006; *New Times*.	The Honorable Manuel A. Diaz, Mayor, City of Miami, Miami City Hall, 3500 Pan American Drive, Miami, Florida 33133.
Leon	City of Tallahasee (05–04–2969P).	May 18, 2006; May 25, 2006; *Tallahasee Democrat*.	The Honorable John Marks, Mayor, City of Tallahassee, 300 South Adams Street, Tallahassee, Florida 32301.
Orange	City of Orlando (06–04–BH16P).	June 29, 2006; July 6, 2006; *Orlando Weekly*.	The Honorable Buddy Dyer, Mayor, City of Orlando, P.O. Box 4990, Orlando, Florida 32802.

Orange	Unincorporated Areas of Orange County (06–04–BH16P).	June 29, 2006; July 6, 2006; *Orlando Weekly*.	The Honorable Richard T. Crotty, Mayor, Orange County, 201 South Rosalind Avenue, Fifth Floor, Orlando, Florida 32801.
Orange	City of Winter Park (06–04–BH16P).	June 29, 2006; July 6, 2006; *Orlando Weekly*.	The Honorable Kenneth Marchman, Mayor, City of Winter Park, 401 Park Avenue South, Winter Park, Florida 32789.
Polk	Village of Highland Park (06–04–BP16).	July 27, 2006; August 3, 2006; *Polk County Democrat*.	The Honorable Earl Sehi, Mayor, Village of Highland Park, 1317 North Highland Park Drive, Lake Wales, Florida 33853.
Polk	City of Lakeland (05–04–2888P).	November 10, 2005; November 17, 2005; *The Polk County Democrat*.	The Honorable Ralph L. Fletcher, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5012.
Polk	City of Lakeland (04–04–B007P).	January 5, 2006; January 12, 2006; *Polk County Democrat*.	The Honorable Ralph L. Fletcher, Mayor, City of Lakeland, 228 South Massachusetts Avenue, Lakeland, Florida 33801–5012.
Polk	Unincorporated Areas of Polk County (05–04–1899P).	November 14, 2005; November 21, 2005; *The Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.
Polk	Unincorporated Areas of Polk County (04–04–B007P).	January 5, 2006; January 12, 2006; *Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.
Polk	Unincorporated Areas of Polk County (05–04–1186P).	June 5, 2006; June 12, 2006; *Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.
Polk	Unincorporated Areas of Polk County (05–04–1186P).	July 27, 2006; August 3, 2006; *Polk County Democrat*.	Mr. Michael Herr, County Manager, Polk County, P.O. Box 9005, Drawer BC01, Bartow, Florida 33831–9005.
Pasco	Unincorporated Areas of Pasco County (05–04–1536P).	August 24, 2006; August 31, 2006; *St. Petersburg Times*.	Mr. John J. Gallagher, County Administrator, Pasco County, West Pasco Government Center, 7530 Little Road, Suite 340, New Port Richey, Florida 34654.
Pinellas	Unincorporated Areas of Pinellas County (05–04–1536P).	August 24, 2006; August 31, 2006; *St. Petersburg Times*.	Mr. Steve Spratt, County Administrator, Pinellas County, 315 Court Street, Clearwater, Florida 33756.
Putnam	Unincorporated Areas of Putnam County (06–04–B037P).	May 18, 2006; May 25, 2006; *Palatka Daily News*.	Mr. Rick Larry, County Administrator, Putnam County, P.O. Box 758, Palatka, Florida 32178.
Santa Rosa	Unincorporated Areas of Santa Rosa County (06–04–BA86P).	May 17, 2006; May 24, 2006; *Santa Rosa's Press Gazette*.	The Honorable Robert A. Cole, Chairman, Santa Rosa County Board of Commissioners, 6495 Caroline Street, Suite M, Milton, Florida 32570.
Georgia:			
Barrow	Unincorporated Areas of Barrow County (05–04–3757P).	April 5, 2006; April 12, 2006; *Barrow County News*.	The Honorable Douglas H. Garrison, Chairman, Barrow County Board of Commissioners, 233 East Broad Street, Winder, Georgia 30680.
Bartow	City of Cartersville (05–04–1806P).	June 22, 2006; June 29, 2006; *Daily Tribune News*.	The Honorable Michael G. Fields, Mayor, City of Cartersville, P.O. Box 1390, Cartersville, Georgia 30120.
Bartow	Unincorporated Areas of Bartow County (05–04–1806P).	June 22, 2006; June 29, 2006; *Daily Tribune News*.	The Honorable Clarence Brown, Bartow County Commissioner, 135 West Cherokee Avenue, Suite 251, Cartersville, Georgia 30120.
Cherokee	Unincorporated Areas of Cherokee County (05–04–A211P).	August 25, 2006; September 1, 2006; *Cherokee Tribune*.	The Honorable J. Michael Byrd, Chairman, Cherokee County, 90 North Street, Suite 310, Canton, Georgia 30114.
Columbia	Unincorporated Areas of Columbia County (05–04–2889P).	August 23, 2006; August 30, 2006; *Columbia County News-Times*.	The Honorable Ron C. Cross, Chairman, Board of Commissioners, Columbia County, 908 Nerium Trail, Evans, Georgia 30809.
Forsyth	Unincorporated Areas of Forsyth County (05–04–2202P).	April 12, 2006; April 19, 2006; *Forsyth County News*.	The Honorable Jack Conway, Commission Chairman, Forsyth County, 110 East Main Street, Suite 210, Cumming, Georgia 30040.
Forsyth	Unincorporated Areas of Forsyth County (05–04–1738P).	May 24, 2006; May 31, 2006; *Forsyth County News*.	Mr. Jeff L. Quesenberry, County Manager, Forsyth County, 110 East Main Street, Suite 210, Cumming, Georgia 30040.
Harris	Unincorporated Areas of Harris County (05–04–A568P).	June 15, 2006; June 22, 2006; *Harris County Journal*.	Mr. Kim W. Russell, Executive Director, Harris County, P.O. Box 426, Hamilton, Georgia 31811.
Thomas	City of Thomasville (06–04–B168P).	March 24, 2006; March 31, 2006; *Thomasville Times Enterprise*.	The Honorable David Lewis, Mayor, City of Thomasville, P.O. Box 1540, Thomasville, Georgia 31799.
Hawaii: Maui	Unincorporated Areas of Maui County (06–09–A607P).	May 25, 2006; June 1, 2006; *Maui News*.	The Honorable Alan M. Arakaw, Mayor, County of Maui, 200 South High Street, Wailuku, Hawaii 96793.
Idaho:			
Canyon	Unincorporated Areas of Canyon County (05–10–0594P).	April 20, 2006; April 27, 2006; *Idaho Press Tribune*.	The Honorable Matt Beebe, Chairman, Canyon County Board of Commissioners, 1115 Albany Street, Caldwell, Idaho 83605.

Caribou	City of Bancroft (06–10–B109P).	June 22, 2006; June 29, 2006; *Caribou County Sun*.	The Honorable William Lester, Mayor, City of Bancroft, P.O. Box 549, Bancroft, Idaho 83217.
Illinois:			
Adams	City of Quincy (05–05–2307P).	August 24, 2006; August 31, 2006; *Quincy Herald-Whig*.	The Honorable John A. Spring, Mayor, City of Quincy, 730 Maine Street, Quincy, Illinois 62301.
Adams	Unincorporated Areas of Adams County (05–05–2307P).	August 24, 2006; August 31, 2006; *Quincy Herald-Whig*.	The Honorable Mike McLaughlin, Chairman, Adams County Board, 521 Vermont Street, Quincy, Illinois 62301.
Cook	Unincorporated Areas of Cook County (05–05–1222P).	February 16, 2006; February 23, 2006; *Daily Herald*.	The Honorable John H. Stronger, Jr., President, Cook County Board of Commissioners, 118 North Clark Street, Room 537, Chicago, Illinois 60602.
Kankakee	Village of Manteno (06–05–BE61P).	June 22, 2006; June 29, 2006; *Daily Journal*.	The Honorable Timothy Nugent, Mayor, Village of Manteno, 269 North Main Street, Manteno, Illinois 60950.
Kendall	Unincorporated Areas of Kendall County (06–05–B570P).	April 13, 2006; April 20, 2006; *Kendall County Record*.	The Honorable Paul Anderson, County Clerk, Kendall County, 111 Fox Street, Yorkville, Illinois 60560.
La Salle	Unincorporated Areas of La Salle County (05–05–1524P).	April 19, 2006; April 26, 2006; *Mendota Reporter*.	The Honorable Glen (Joe) Dougherty, Chairman, La Salle County Board of Commissioners, 707 Etna Road, Ottawa, Illinois 61350.
Will	Village of Bolingbrook (06–05–B595P).	July 14, 2006; July 21, 2006; *Bolingbrook Sun*.	The Honorable Roger C. Claar, Mayor, Village of Bolingbrook, 375 West Briarcliff Road, Bolingbrook, Illinois 60440.
Will	Village of Plainfield (06–05–B013P).	August 24, 2006; August 31, 2006; *Daily Southtown*.	The Honorable James A. Waldorf, Village President, Village of Plainfield, 14000 West Lockport Street, Plainfield, Illinois 60544.
Will	Unincorporated Areas of Will County (05–05–3131P).	March 23, 2006; March 30, 2006; *Daily Southtown*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.
Will	Unincorporated Areas of Will County (06–05–B013P).	August 24, 2006; August 31, 2006; *Daily Southtown*.	The Honorable Lawrence M. Walsh, Will County Executive, 302 North Chicago Street, Joliet, Illinois 60432.
Indiana:.			
Bartholomew	Unincorporated Areas of Bartholomew County (06–05–BD86P).	May 18, 2006; May 25, 2006; *Bartholomew Republic*.	The Honorable Fred L. Armstrong, Mayor, City of Columbus, Columbus City Hall, 123 Washington Street, Columbus, Indiana 47201.
Lake	Town of St. John (05–05–A422P).	July 20, 2006; July 27, 2006; *Post Tribune*.	Mr. Stephen Z. Kil, Town Manager, Town of St. John, 10955 West 93rd Avenue, St. John, Indiana 46373.
Laporte	City of Michigan City (06–05–B876P).	July 20, 2006; July 27, 2006; *News Dispatch*.	The Honorable Chuck Oberlie, Mayor, City of Michigan City, 100 East Michigan Boulevard, Michigan City, Indiana 46360.
Marion	City of Indianapolis (05–05–0743P).	February 10, 2006; February 17, 2006; *Indianapolis Recorder*.	The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, Indiana 46204.
Marion	City of Indianapolis (05–05–2979P).	April 20, 2006; April 27, 2006; *Indianapolis Newspaper Daily Star*.	The Honorable Bart Peterson, Mayor, City of Indianapolis, 2501 City-County Building, 200 East Washington Street, Indianapolis, Indiana 46204.
Iowa:			
Black Hawk	City of Cedar Falls (04–07–A141P).	February 23, 2006; March 2, 2006; *Waterloo Courier*.	The Honorable Jon Crews, Mayor, City of Cedar Falls, 220 Clay Street, Cedar Falls, Iowa 50613.
Linn	Unincorporated Areas of Linn County (05–07–0212P).	April 20, 2006; April 27, 2006; *Cedar Rapids Gazette*.	The Honorable Linda Langston, Chairperson, Linn County, Board of Supervisors, 930 First Street Southwest, Cedar Rapids, Iowa 52404.
Story	City of Ames (04–07–A685P).	November 10, 2005; November 17, 2005; *The Tribune*.	The Honorable Ted Tedesco, Mayor, City of Ames, 515 Clark Avenue, Ames, Iowa 50010.
Kansas:			
Cowley	City of Arkansas City (04–07–A497P).	March 15, 2006; March 22, 2006; *Arkansas City Traveler*.	The Honorable Joel Hockenbury, Mayor, City of Arkansas City, 118 West Central Avenue, Arkansas City. Kansas 67005.
Cowley	Unincorporated Areas of Cowley County (04–07–A497P).	March 15, 2006; March 22, 2006; *Arkansas City Traveler*.	The Honorable Gary Wilson, Chairman, Cowley County Board of Commissioners, 311 East Ninth Avenue, Winfield, Kansas 67156.
Harvey	City of Sedgwick (04–07–A502P).	January 26, 2006; February 2, 2006; *The Newton Kansan*.	The Honorable Keith Dehaven, Mayor, City of Sedgwick, 511 North Commercial, Sedgwick, Kansas 67135.
Harvey	Unincorporated Areas of Harvey County (04–07–A502P).	January 26, 2006; February 2, 2006; *The Newton Kansan*.	The Honorable Ron Krehbiel, Chairman, Harvey County Board of Commissioners, P.O. Box 687, Newton, Kansas 67114.

Johnson	City of Overland Park (05–07–A066P).	February 9, 2006; February 16, 2006; *Overland Park Sun*.	The Honorable Carl Gerlach, Mayor, City of Overland Park, 8500 Santa Fe Drive, Overland Park, Kansas 66212.
Sedgwick	Unincorporated Areas Sedgwick County (05–07–0176P).	February 9, 2006; February 16, 2006; *Derby Reporter*.	The Honorable Dave Unruh, Chairman, Sedgwick County Board of Commissioners, 525 North Main Street, Suite 320, Wichita, Kansas 67203.
Sedgwick	Unincorporated Areas of Sedgwick County (05–07–B015P).	June 8, 2006; June 15, 2006; *Wichita Eagle*.	The Honorable Dave Unruh, Chairman, Sedgwick County Board of Commissioners, 525 North Main Street, Suite 320, Wichita, Kansas 67203.
Sedgwick	City of Wichita (05–07–0752P).	May 18, 2006; May 25, 2006; *Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, 455 North Main, Wichita, Kansas 67202.
Sedgwick	City of Wichita (06–07–B015P).	June 8, 2006; June 15, 2006; *Wichita Eagle*.	The Honorable Carlos Mayans, Mayor, City of Wichita, 455 North Main, Wichita, Kansas 67202.
Wyandotte	City of Kansas City (04–07–A556P).	May 25, 2006; June 1, 2006; *Kansas City Daily Record*.	The Honorable Joe Reardon, Mayor, Unified Government of Wyandotte County/Kansas City, 701 North Seventh Street, Kansas City, Kansas 66101.
Kentucky: Warren	City of Bowling Green (05–04–1251P).	March 30, 2006; April 6, 2006; *Park City Daily News*.	The Honorable Elaine Walker, Mayor, City of Bowling Green, P.O. Box 430, Bowling Green, Kentucky 42101.
Louisiana:			
St. Tammy Parish	St. Tammy Parish (06–06–BA65P).	August 2, 2006; August 9, 2006; *St. Tammy News*.	The Honorable Kevin Davis, Parish President, St. Tammy Parish, P.O. Box 628, Covington, Louisiana 70434.
St. Tammy Parish	St. Tammy Parish (06–06–BD86P).	September 13, 2006; September 20, 2006; *St. Tammy News*.	The Honorable Kevin Davis, Parish President, St. Tammy Parish, P.O. Box 628, Covington, Louisiana 70434.
Massachusetts:			
Barnstable	Town of Barnstable (05–01–0764P).	March 30, 2006; April 6, 2006; *Cape Cod Times*.	Mr. John C. Klimm, Town Manager, Town of Barnstable, Barnstable Town Hall, 369 Main Street, Hyannis, Massachusetts 02601.
Barnstable	Town of Bourne (05–01–A062P).	May 25, 2006; June 1, 2006; *Cape Cod Times*.	Mr. Thomas Guerino, Town Administrator, Town of Bourne, Town Hall, 24 Perry Avenue, Bourne, Massachusetts 02532.
Barnstable	Town of Provincetown (05–01–0580P).	May 11, 2006; May 18, 2006; *Cape Cod Times*.	Mr. Keith A. Bergman, Town Manager, Town of Provincetown, Provincetown Town Hall, 260 Commercial Street, Provincetown, Massachusetts 02657.
Plymouth	Town of Duxbury (05–01–0410P).	December 1, 2005; December 8, 2005; *The Enterprise*.	The Honorable John J. Tuffy, Chairman, Board of Selectman, Town of Duxbury, Town Hall, 878 Tremont Street, Duxbury, Massachusetts 02332.
Worcester	Town of Milford (05–01–0129P).	December 8, 2005; December 15, 2005; *Milford Daily News*.	The Honorable Dino B. DeBartolomeis, Chairman, Board of Selectman, Town of Milford, 52 Main Street, Milford, Massachusetts 01757.
Maine:			
Cumberland	City of Falmouth (05–01–0287P).	June 22, 2006; June 29, 2006; *Falmouth Community Leader*.	Mr. John D. Harris, Town Manager, Town of Falmouth, 271 Falmouth Road, Falmouth, Maine 04105.
Cumberland	City of Falmouth (06–01–B534P).	August 17, 2006; August 24, 2006; *Falmouth Community Leader*.	Mr. John D. Harris, Town Manager, Town of Falmouth, 271 Falmouth Road, Falmouth, Maine 04105.
Cumberland	Town of Harpswell (05–01–B113P).	June 15, 2006; June 22, 2006; *Portland Press Herald*.	The Honorable Gordon L. Wei, Chair, Board of Selectmen, Town of Harpswell, P.O. Box 39, Harpswell, Maine 04079.
Cumberland	Town of Standish (05–01–A566P).	May 11, 2006; May 18, 2006; *Portland Press Herald*.	Mr. Gordon F. Billington, Town Manager, Town of Standish, 175 Northeast Road, Standish, Maine 04084.
Cumberland	Town of Standish (05–01–B168P).	August 31, 2006; September 7, 2006; *Portland Press Herald*.	Mr. Gordon F. Billington, Town Manager, Town of Standish, 175 Northeast Road, Standish, Maine 04084.
Cumberland	Town of Windham (06–01–B270P).	September 14, 2006; September 21, 2006; *Portland Press Herald*.	The Honorable John MacKinnon, Chairman, Windham Town Council, Eight School Road, Windham, Maine 04062.
Washington	Town of Milbridge (05–01–0691P).	May 11, 2006; May 18, 2006; *Bangor Daily News*.	Mr. Fred Ventresco, Town Manager, Town of Milbridge, P.O. Box 66, Milbridge, Maine 04658.
York	Town of Alfred (05–01–B101X).	February 23, 2006; March 2, 2006; *York County Coast Star*.	The Honorable John Sylvestor, Chair, Board of Selectman, Town of Alfred, P.O. Box 667, Alfred, Maine 04002.
York	Town of Lyman (05–01–B101X).	February 23, 2006; March 2, 2006; *York County Coast Star*.	The Honorable Norman Hutchins, Chair, Board of Selectman, Town of Lyman, 11 South Waterboro Road, Lyman, Maine 04002.
Maryland:			

Carroll	Unincorporated Areas of Carroll County (05–03–0321P).	August 31, 2006; September 7, 2006; *Carroll County Times*.	The Honorable Julia W. Gouge, President, Carroll County Board of Commissioners, 225 North Center Street, Westminster, Maryland 21157.
Frederick	City of Frederick (05–03–0831P).	June 14, 2006; June 21, 2006; *Frederick News Post*.	The Honorable William J. Holtzinger, Mayor, City of Frederick, City Hall, 101 North Court Street, Frederick, Maryland 21701–5415.
Frederick	Unincorporated Areas of Frederick County (05–03–0831P).	June 14, 2006; June 21, 2006; *Frederick News Post*.	The Honorable John L. Thompson, President, Frederick County Board of Commissioners, 12 East Church Street, Frederick, Maryland 21701.
Michigan:			
Kalamazoo	City of Kalamazoo (05–05–2181P).	June 22, 2006; June 29, 2006; *Kalamazoo Gazette*.	Mr. Kenneth P. Collard, City Manager, City of Kalamazoo, City Hall, 241 West South Street, Kalamazoo, Michigan 49007.
Kalamazoo	City of Portage (05–05–2181P).	June 22, 2006; June 29, 2006; *Kalamazoo Gazette*.	Mr. Maurice S. Evans, City Manager, City of Portage, City Hall, 7900 South Westmedge Avenue, Portage, Michigan 49002.
Wayne	Township of Canton (05–05–3132P).	February 16, 2006; February 23, 2006; *Canton Eagle*.	The Honorable Thomas J. Yack, Supervisor, Township of Canton, 1150 South Canton Center Road, Canton, Michigan 48188.
Minnesota:			
Isanti	City of Isanti (04–05–B083P).	January 4, 2006; January 11, 2006; *Isanti County News*.	The Honorable David Apitz, Mayor, City of Isanti, P.O. Box 126, Isanti, Minnesota 55040.
Isanti	Unincorporated Areas of Isanti County (04–05–B083P).	January 4, 2006; January 11, 2006; *Isanti County News*.	The Honorable Tom Pagel, Chair, Isanti County Board of Commissioners, Isanti County Government Center, 509–555 18th Avenue Southwest, Cambridge, Minnesota 55008.
Ramsey	City of Shoreview (04–05–B066P 06–05–BD34X)).	December 13, 2005; December 20, 2005; *The Shoreview Press*.	The Honorable Sandy Martin, Mayor, City of Shoreview, 4600 Victoria Street North, Shoreview, Minnesota 55126.
Rice	City of Northfield (05–05–1343P).	November 16, 2005; November 23, 2005; *Northfield News*.	The Honorable Lee Lansing, Mayor, City of Northfield, City Hall, 801 Washington Street, Northfield, Minnesota 55057.
Rice	Unincorporated Areas of Rice County (05–05–1343P).	November 16, 2005; November 23, 2005; *Northfield News*.	The Honorable Jim Brown, Chairperson, Rice County Board of Commissioners, 320 Northwest Third Street, Faribault, Minnesota 55021.
Missouri:			
Clay, Jackson , Platte	City of Kansas City (05–07–0483P).	January 26, 2006; February 2, 2006; *Kansas City Daily Record*.	The Honorable Kay Barnes, Mayor, City of Kansas City, 414 East 12th Street, Kansas City, Missouri 64106.
Clay, Jackson , Platte	City of Kansas City (04–07–A556P).	May 25, 2006; June 1, 2006; *Kansas City Daily Record*.	The Honorable Kay Barnes, Mayor, City of Kansas City, 414 East 12th Street, Kansas City, Missouri 64106.
Howell	City of West Plains (05–07–A513P).	May 18, 2006; May 25, 2006; *West Plains Daily Quill*.	The Honorable Joe Paul Evans, Mayor, City of West Plains, P.O. Box 710, West Plains, Missouri 65775–0710.
Jackson	City of Grain Valley (04–07–A290P).	February 23, 2006; March 3, 2006; *The Independence Examiner*.	The Honorable David Halphin, Mayor, City of Grain Valley, 711 Main Street, Grain Valley, Missouri 64029.
Jefferson	City of De Soto (06–07–B476P).	May 18, 2006; May 25, 2006; *Jefferson County Leader*.	The Honorable Werner Stichling, Mayor, City of De Soto, 411 Lueking Drive, De Soto, Missouri 63020.
Platte	City of Northmoor (04–07–A556P).	May 25, 2006; June 1, 2006; *The Landmark*.	The Honorable Harlan Shaver, Jr., Mayor, City of Northmoor, 4907 Northwest Waukomis Drive, Northmoor, Missouri 64151.
Platte	City of Parkville (04–07–A556P).	May 25, 2006; June 1, 2006; *The Landmark*.	The Honorable Kathy Dusenbery, Mayor, City of Parkville, 1201 East Street, Parkville, Missouri 64152.
Platte	City of Riverside (04–07–A556P).	May 25, 2006; June 1, 2006; *The Landmark*.	The Honorable Kathy Rose, Mayor, City of Riverside, 2950 Northwest Vivion Road, Riverside, Missouri 64150.
Pettis	City of Sedalia (05–07–0407P).	June 22, 2006; June 29, 2006; *Sedalia Democrat*.	The Honorable Bob Wasson, Mayor, City of Sedalia, P.O. Box 1707, Sedalia, Missouri 65301.
Phelps	City of Rolla (05–07–0279P).	December 15, 2005; December 22, 2005; *Rolla Daily News*.	The Honorable Joseph E. Morgan, Mayor, City of Rolla, 102 West Ninth Street, Rolla, Missouri 65401.
St. Charles	City of O'Fallon (04–07–A649P).	April 19, 2006; April 26, 2006; *St. Charles Journal*.	The Honorable Donna Morrow, Mayor, City of O'Fallon, 100 North Main Street, O'Fallon, Missouri 63366.
St. Charles	Unincorporated Areas of St. Charles County (04–07–A649P).	April 19, 2006; April 26, 2006; *St. Charles Journal*.	The Honorable Joe Ortwerth, County Executive, St. Charles County, Historic Courthouse, 100 North Third Street, St. Charles, Missouri 63301.
St. Louis	City of Chesterfield (04–07–A535P) (06–07–B229X).	January 5, 2006; January 12, 2006; *St. Louis American*.	The Honorable John Nations, Mayor, City of Chesterfield, 690 Chesterfield Parkway West, Chesterfield, Missouri 63017–0670.

St. Louis	City of Maryland Heights (04–07–A535P) (06–07–B229X).	January 5, 2006; January 12, 2006; *St. Louis American*.	The Honorable Mike Moeller, Mayor, City of Maryland Heights, 212 Millwell Drive, Maryland Heights, Missouri 63043.
St. Louis	City of Eureka (06–07–B002P).	June 21, 2006; June 28, 2006; *St. Louis Daily Record*.	The Honorable Kevin M. Coffey, Mayor, City of Eureka, P.O. Box 125, Eureka, Missouri 63025.
St. Louis	City of Valley Park (06–07–B081P).	April 19, 2006; April 26, 2006; *West County Suburban Journal*.	The Honorable Jeffery J. Whitteaker, Mayor, City of Valley Park, 320 Benton Street, Valley Park, Missouri 63088.
St. Louis	City of Wildwood (06–07–B002P).	June 21, 2006; June 28, 2006; *St. Louis Daily Record*.	The Honorable Edward L. Marshall, Mayor, City of Wildwood, City Hall 16962, Manchester Road, Wildwood, Missouri 63040.
Madison	City of Madison (06–04–BC51P).	June 15, 2006; June 22, 2006; *Madison County Journal*.	The Honorable Mary Hawkins Butler, Mayor, City of Madison, P.O. Box 40, Madison, Mississippi 39130–004.
Madison	City of Madison (06–04–B265P).	June 22, 2006; June 29, 2006; *Madison County Journal*.	The Honorable Mary Hawkins Butler, Mayor, City of Madison, P.O. Box 40, Madison, Mississippi 39130–004.
Madison	Unincorporated Areas of Madison County (06–04–B265P).	June 22, 2006; June 29, 2006; *Madison County Journal*.	The Honorable Timothy L. Johnson, President, Madison County Board of Supervisors, P.O. Box 608, Canton, Mississippi 39046.
Rankin	City of Brandon (06–04–B977P).	August 16, 2006; August 23, 2006; *Rankin County News*.	The Honorable Carlo Martella, Mayor, City of Brandon, P.O. Box 1539, Brandon, Mississippi 39043.
Simpson	City of Magee (05–04–1476P).	December 15, 2005; December 22, 2005; *The Magee Courier*.	The Honorable Jimmy Clyde, Mayor, City of Magee, 123 Main Avenue North, Magee, Mississippi 39111.
Montana: Gallatin	City of Three Forks (05–08–A579P).	March 23, 2006; March 30, 2006; *Bozeman Daily Chronicle*.	The Honorable Gene Townsend, Mayor, City of Three Forks, P.O. Box 187, Three Forks, Montana 59752.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17253 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	*Existing Elevation in feet (NGVD) +Modified Elevation in feet (NAVD) Modified
City of Sundance, Wyoming Docket No.: FEMA–B–7460				
WY	City of Sundance	Sundance Creek	1.9 miles downstream of Sundance Pond	+4,584
			Confluence of North Fork and South Fork Sundance Creek.	4,759
		North Fork Sundance Creek.	Confluence with Sundance Creek	+4,759
			800 feet upstream of West Street	+4,799
			Confluence of North Fork Sundance Creek.	+4,759
		South Fork Sundance Creek.	350 feet upstream of State Highway 90	+4,792

#Depth in feet above ground
*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES:

Maps are available for inspection at: City Hall
Send Comments to: The Honorable James Miller, Mayor, City of Sundance, 213 Main Street, Sundance, Wyoming 82729

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Lexington/ Fayette County, Kentucky and Incorporated Areas Docket No.: FEMA–B–7456			
Bryant Tributary	Confluence with North Elkhorn Creek	+942.8	Lexington/Fayette.
	At I–75	+984.8	
Bowman Mill Tributary	Confluence with South Elkhorn Creek	+890.0	Lexington/Fayette.
	Approximately 880 feet upstream of Palomar Drive.	+940.0	
Cave Hill Tributary	Confluence with Bowman Mill Tributary	+901.9	Lexington/Fayette.
	Approximately 370 feet upstream of the farm road culvert.	+940.0	
Southpoint Tributary	Confluence with West Hickman Creek	+892.0	Lexington/Fayette.
	Approximately 2,800 feet upstream of Southpoint Drive.	+947.1	
Wolf Run Creek	Beacon Hill Road culvert	+921.8	Lexington/Fayette.
	Approximately 300 feet upstream of Nicholasville Road.	+990.9	

– Depth in feet above ground
*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES:

Lexington Fayette Urban County Government:

Maps are available for inspection at LFUCG-Division of Planning, 200 East Main Street, 10th Floor, Lexington, KY 40507 or LFUCG-Division of Engineering, 101 East Vine Street, 4th Floor, Lexington, KY 40507

Send comments to the Honorable Teresa Ann Isaac, Mayor, Lexington Fayette Urban County Government, 200 East Main St., Lexington, KY 40507

Philadelphia County, Pennsylvania and Incorporated Areas Docket No.: FEMA–B–7458			
Byberry Creek	Approximately 500 feet downstream from Thornton Road.	*88	City of Philadelphia.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Tributary to Poquessing Creek	Approximately 900 feed upstream from Roosevelt Boulevard.	*136	City of Philadelphia.
	Approximately 1,280 feet downstream from Whitney Street.	*144	
	Approximately 1,400 feet upstream from SEPTA bridge.	*180	

#Depth in feet above ground
*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES:

City of Philadelphia:

Maps are available for inspection at Philadelphia City Planning Commission, Philadelphia, PA 19102
Send comments to Mr. William Erickson, City Planner, City of Philadelphia, 1515 Arch Street, 13th Floor, Philadelphia, PA 19102

Laramie County Wyoming, and Incorporated Areas
Docket No.: FEMA–B–7459

Allison Draw	At Confluence with Crow Creek	+5949	Laramie County (Uninc. Areas).
	At West College Drive	+6017	
South Fork Allison Draw	At Confluence with Allison Draw	+5993	Laramie County (Uninc. Areas).
	At East College Drive	+6000	

Depth in feet above ground
*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES:

Unincorporated Areas of Laramie County:

Maps are available for inspection at Laramie County Planning Department, 310 West 19th Street, Suite 400, Cheyenne, WY 82001.
Send comments to Commissioner Diane Humphrey, Chairman, Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17257 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM

available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Sedgwick County, Kansas, and Incorporated Areas [Docket No.: FEMA–P–7911]			
Armour Branch Gypsum Creek.	At confluence with Gypsum Creek	+1,322	City of Eastborough, City of Wichita.
	Approximately 1,120 feet upstream of Rockwood Road.	+1,368	
Big Slough South	Approximately 500 feet upstream of confluence with Arkansas River.	+1,258	City of Wichita, Sedgwick County (Unincorporated Areas).
	Approximately 2,830 feet upstream of South Meridian Avenue.	+1,286	
Calfskin Creek	At confluence with Cowskin Creek	+1,316	City of Wichita, Sedgwick County (Unincorporated Areas).
	Approximately 5,070 feet upstream of South 119th Street West.	+1,324	
Cowskin Creek	At confluence with Wichita Valley Center Floodway.	+1,279	City of Colwich, City of Maize, City of Wichita, Sedgwick County (Unincorporated Areas).
	Approximately 4,000 feet downstream of State Highway 296.	+1,368	
Dry Creek of Gypsum Creek.	At confluence with Gypsum Creek	+1,290	City of Wichita.
	Approximately 150 feet upstream of the confluence with Gypsum Creek.	+1,290	
Dry Creek North of Cowskin Creek.	At confluence with Cowskin Creek	+1,347	Sedgwick County (Unincorporated Areas).
	At West 167th Street North	+1,386	
Dry Creek South of Cowskin Creek.	At confluence with Cowskin Creek	+1,292	Sedgwick County (Unincorporated Areas).
	At South Maize Road	+1,317	
Dry Creek of Spring Creek.	Just downstream of East Madison Avenue	+1,266	City of Derby, Sedgwick County (Unincorporated Areas).
	Approximately 50 feet upstream of East 55th Street South.	+1,331	
East Branch Gypsum Creek.	At confluence with Gypsum Creek	+1,334	City of Wichita.
	Approximately 100 feet upstream of East Central Parkway.	+1,343	
East Branch Gypsum Creek (Splitflow).	At convergence with East Branch Gypsum Creek.	+1,340	City of Wichita.
	At divergence from East Branch Gypsum Creek.	+1,342	
East Fork Chisholm Creek.	At confluence with Wichita Drainage Canal	+1,306	City of Wichita.
	At Interstate Highway 135 Access Road	+1,306	
Fabrique Branch Gypsum Creek.	At confluence with Gypsum Creek	+1,317	City of Wichita.
	Approximately 150 feet upstream of Pedestrian Bridge/East Zimmerly Avenue.	+1,325	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Frisco Ditch	Approximately 140 feet upstream of Interstate Highway 135.	+1,300	City of Wichita.
	Approximately 600 feet upstream of Northeast Cemetery Road.	+1,366	
Gypsum Creek	At confluence with Wichita Drainage Canal	+1,278	City of Wichita, Sedgwick County (Unincorporated Areas).
	At confluence of Middle and West Branches of Gypsum Creek.	+1,338	
Little Arkansas River (Upper Reach).	Approximately 2,400 feet downstream of Wichita Valley Center Floodway Control Structure.	+1,340	Sedgwick County (Unincorporated Areas).
	At County Boundary	+1,372	
Middle Branch Gypsum Creek.	At confluence with Gypsum Creek	+1,339	City of Wichita.
	Approximately 2,400 feet upstream of East Tipperary Street.	+1,352	
Middle Fork Calfskin Creek.	Approximately 70 feet upstream of the confluence with North Fork Calfskin Creek.	+1,325	City of Wichita.
	Approximately 3,375 feet upstream of confluence with North Fork Calfskin Creek.	+1,340	
North Fork Calfskin Creek.	At confluence with Calfskin Creek	+1,322	City of Wichita, Sedgwick County (Unincorporated Areas).
	Approximately 4,350 feet upstream of North 135th Street West.	+1,370	
Rock Road South Tributary Gypsum Creek.	Approximately 650 feet upstream of South Rock Road.	+1,326	City of Wichita.
	Approximately 3,730 feet upstream of East Harry Street.	+1,347	
Spring Creek	Approximately 1,700 feet upstream of the confluence with Arkansas River.	+1,237	City of Derby, Sedgwick County (Unincorporated Areas).
	Approximately 50 feet upstream of East 63rd Street South/South Greenwich Road.	+1,309	
Tributary to North Fork Calfskin Creek.	At confluence with North Fork Calfskin Creek	+1,346	City of Wichita, Sedgwick County (Unincorporated Areas).
	Approximately 3,930 feet upstream of North 151st Street West.	+1,381	
West Branch Gypsum Creek.	At confluence with Gypsum Creek	+1,338	City of Wichita.
	Approximately 175 feet upstream of East Farmview Lane.	+1,382	

*National Geodetic Vertical Datum:
#Depth in feet above ground
+North American Vertical Datum

ADDRESSES:

City of Colwich:
Maps are available for inspection at the Community Map Repository, City Hall, 310 South Second Street, Colwich, Kansas.
City of Derby:
Maps are available for inspection at the Community Map Repository, City Hall, 611 Mulberry Street, Derby, Kansas.
City of Eastborough:
Maps are available for inspection at the Community Map Repository, City Hall, 1 Douglas Street, Wichita, Kansas.
City of Maize:
Maps are available for inspection at the Community Map Repository, City Hall, 123 Khedive, Maize, Kansas.
Sedgwick County, Kansas (Unincorporated Areas):
Maps are available for inspection at the Community Map Repository, Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, Kansas.
City of Wichita:
Maps are available for inspection at the Community Map Repository, Office of Stormwater Management, 455 North Main Street, 8th Floor, Wichita, Kansas.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17258 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground modified	Communities affected
Clear Creek County, Colorado and Incorporated Areas Docket No.: FEMA–B–7458			
Chicago Creek	Confluence With Clear Creek 2.24 miles upstream of state Highway 103.	+7,546 +7,898	Clear Creek County (Unincorporated Areas) and City of Idaho Springs.
Clear Creek	Upstream side of I–70 (Alvorado Road)	+8,275	Town of Georgetown.
	The bottom spillway of the Georgetown Dam	+8,430	
Clear Creek	0.27 miles upstream of the confluence with Spring Gulch.	+7,836	Clear Creek County (Unincorporated Areas).
	3.77 miles upstream of the confluence with Spring Gulch.	+8,180	
Fall River	Confluence with Clear Creek	+7,716	Clear Creek County (Unincorporated Areas).
	Three miles upstream of confluence with Clear Creek.	+8,394	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground modified	Communities affected

Depth in feet above ground.
*National Geodetic Vertical Datum.
+North American Vertical Datum.

ADDRESSES:

Unincorporated Areas of Clear Creek County:

Maps are available for inspection at: The County Courthouse.
Send Comments to: Mr. Harry Dale, Chairman, Clear Creek County Commissioners, 405 Argentine Street, Georgetown, Colorado 80444.

Town of Georgetown:

Maps are available for inspection at: Town Hall.
Send comments to The Honorable Robert C. Smith, Mayor, Town of Georgetown, 404 6th Street, Georgetown, Colorado 80444.

City of Idaho Springs:

Maps are available for inspection at: City Hall.
Send comments to: The Honorable Dennis Lundery, Mayor, City of Idaho Springs, 1711 Miner Street, Idaho Springs, Colorado 80452.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17259 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Effective Dates: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	+Elevation in feet (NGVD) *Elevation in feet (NAVD) #Depth in feet above ground modified	Communities affected
Athens—Clark County, Georgia Docket No.: FEMA–B–7463			
Brooklyn Creek Tributary A	At the confluence with Brooklyn Creek	*697	Athens—Clark County.
	Approximately 40 feet upstream of the confluence with Brooklyn Creek.	*697	
McNutt Creek	At the confluence with Middle Oconee River	*558	Athens—Clark County/
	Approximately 1,230 feet downstream of U.S. Highway 441/ U.S. Highway 129/State Highway 15 and Macon Highway.	*559	
Trail Creek	At the confluence with North Oconee River	*615	Athens—Clark County.
	Approximately 550 feet downstream of Broad Street	*615	
Tributary A–1	At the confluence with Tributary A	*659	Athens—Clark County.
	Approximately 100 feet upstream of the confluence with Tributary A.	*659	
Tributary A–2	At the confluence with Tributary A	*695	Athens—Clark County.
	Approximately 260 feet upstream of the confluence with Tributary A.	*698	
Tributary H	At the confluence with Big Creek	*607	Athens—Clark County.
	Approximately 870 feet upstream of the confluence with Big Creek.	*609	

#Depth in feet above ground.
*National Geodetic Vertical Datum.
+North American Vertical Datum.
[1] The existing elevation data included on the effective FIRM is printed in the elevation datum of the National Geodetic Vertical Datum of 1929 (NGVD29). In order to convert this printed elevation data from the NGVD29 datum to the NAVD88 datum, please subtract 0.194 feet.

ADDRESSES:

Maps are available for inspection at the Athens-Clark County Public Works Department, 120 West Dougherty Street, Athens, Georgia.
Send comments to The Honorable Heidi Davison, Mayor, City of Athens-Clark County, 301 College Avenue, Athens, Georgia 30601.

Bibb County, Georgia (Unincorporated Areas) Docket No.: FEMA–B–7463			
Walnut Creek	Approximately 400 feet upstream of Interstate Highway 16	*299	Bibb County (Unincorporated Areas).
	Just downstream of the Norfolk Southern Railway	*300	

#Depth in feet above ground.
*National Geodetic Vertical Datum.
+North American Vertical Datum.
[1] The existing elevation data included on the effective FIRM is printed in the elevation datum of the National Geodetic Vertical Datum of 1929 (NGVD29). In order to convert this printed elevation data from the NGVD29 datum to the NAVD88 datum, please subtract 0.4 feet.

ADDRESSES:

Maps are available for inspection at the Bibb County Engineering Office, 780 Third Street, Macon, Georgia.
Send comments to The Honorable Charles Bishop, Chairman, Bibb County Board of Commissioners, 601 Mulberry Street, Macon, Georgia 31201.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 6, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17260 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Effective Dates: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive

Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr. CFM, Acting Section Chief, Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR Part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Chatham County, North Carolina and Incorporated Areas FEMA Docket Nos. D–7646 and D–7660			
B. Everett Jordan Lake	For its entire shoreline	+238	Chatham County (Unincorporated Areas), Town of Pittsboro.
Bear Creek	Approximately 0.6 mile upstream of Edwards Hill Church Road.	+456	Chatham County (Unincorporated Areas).
	Approximately 2.7 miles upstream of confluence of Bear Creek Tributary 1.	+479	
Bear Creek (into Indian Creek)	At the confluence of Indian Creek (into Deep River).	+242	Chatham County (Unincorporated Areas).
	Approximately 400 feet upstream of Bonlee Carbonton Road.	+391	
Bear Creek Tributary 1	At the confluence with Bear Creek	+457	Chatham County (Unincorporated Areas).
	Approximately 0.5 mile upstream of confluence with Bear Creek.	+459	
Beaver Creek	At the Chatham and Wake County boundary	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	
Beaver Creek Tributary 1	At the confluence with Beaver Creek and B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Tody Goodwin Road.	+275	
Beaver Creek Tributary 2	At the confluence with Beaver Creek and B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Tody Godwin Road.	+251	
Beaver Creek Tributary 3	At the confluence with Beaver Creek and B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Beaver Creek and B. Everett Jordan Lake.	+263	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Blood Run Creek	At Chatham and Randolph County boundary	+495	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.3 mile upstream of U.S. 64	+594	
Brooks Creek	Approximately 2.2 miles upstream of the confluence with Haw River.	+383	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 0.6 mile upstream of Old Graham Road.	+444	
Brooks Creek Tributary 1	At the confluence with Brooks Creek	+384	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 970 feet upstream of Russells Chapel Church Road.	+397	
Brush Creek	At the Chatham and Randolph County boundary.	+499	Chatham County (Unincorporated Areas), Town of Siler City.
	At the Chatham and Randolph County boundary.	+552	
Buckhorn Creek	At the confluence with Cape Fear River	+155	Chatham County (Unincorporated Areas).
	At the Harris Reservoir Dam	+177	
Buckhorn Creek Tributary 1	At the confluence with Buckhorn Creek	+168	
	Approximately 0.6 mile upstream of the confluence with Buckhorn Creek.	+237	Chatham County (Unincorporated Areas).
Buckhorn Creek Tributary 2	At the confluence with Buckhorn Creek	+175	
	Approximately 0.7 mile upstream of the confluence with Buckhorn Creek.	+222	Chatham County (Unincorporated Areas).
Buckhorn Creek Tributary 3	At the confluence with Buckhorn Creek	+177	Chatham County (Unincorporated Areas).
	Approximately 0.1 mile upstream of the Railroad.	+191	
Buckhorn Creek Tributary 4	At the confluence with Harris Reservoir	+232	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with the Harris Reservoir.	+282	
Bush Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Big Woods Road.	+253	
Cape Fear River	At the Chatham and Harnett County boundary	+152	Chatham County (Unincorporated Areas).
	At the confluence with Deep River and Haw River.	+177	
Cedar Creek	At the confluence with Deep River	+233	Chatham County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Henry Oldham Road.	+248	
Cedar Creek Tributary 1	At the confluence with Cedar Creek	+233	Chatham County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Henry Oldham Road.	+252	
Cedar Creek Tributary 2	At the confluence with Cedar Creek Tributary 1	+236	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Unnamed Road.	+259	
Collins Creek	At the confluence with the Haw River	+402	Chatham County (Unincorporated Areas).
	Approximately 0.45 mile upstream of the confluence of Persimmons Nursery Branch at the Chatham and Orange County boundary.	+451	
Crooked Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	At the Chatham and Durham County boundary	+239	
Crows Creek	At the confluence with Terrells Creek	+369	Chatham County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 550 feet upstream of Eagle Point Road.	+406	
Cub Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Nature Trail Road.	+271	
Deep River	At the confluence with Cape Fear River	+177	Chatham County (Unincorporated Areas).
	At the Chatham, Moore, and Lee County boundaries.	+250	
Deep River Tributary 5	At the confluence with Deep River	+240	Chatham County (Unincorporated Areas).
	Approximately 2,200 feet upstream of Alton King Road.	+274	
Deep River Tributary 6	At the confluence with Deep River Tributary 5	+240	Chatham County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Alton King Road.	+252	
Deep River Tributary 7	At the confluence with Deep River	+240	Chatham County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Alton King Road.	+300	
Deep River Tributary 8	At the confluence with Deep River	+240	Chatham County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Alton King Road.	+245	
Dry Creek	At the confluence with Haw River	+337	Chatham County (Unincorporated Areas).
	Approximately 2.9 miles upstream of Silk Hope Gum Springs Road.	+532	
East Price Creek	At the Chatham and Orange County boundary	+402	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the Chatham County boundary.	+426	
Folkner Branch	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 500 feet upstream of Farrells Creek Road.	+256	
Georges Creek	At the confluence with Deep River	+225	Chatham County (Unincorporated Areas).
	Approximately 2.5 miles upstream of Rosser Road.	+260	
Georges Creek Tributary 1	At the confluence with Georges Creek	+225	Chatham County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Georges Creek.	+244	
Georges Creek Tributary 2	At the confluence with Georges Creek	+225	Chatham County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Georges Creek.	+237	
Greenbriar Creek	At the confluence with Rocky River	+586	Chatham County (Unincorporated Areas).
	At the Alamance and Chatham County boundary.	+632	
Gulf Creek	At the confluence with Cape Fear River	+172	Chatham County (Unincorporated Areas)
	Approximately 1.7 miles upstream of Unnamed Road.	+191	
Harlands Creek	At the confluence with Rocky River	+331	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 800 feet upstream of U.S. 64	+428	
Harlands Creek	Approximately 800 feet upstream of U.S. 64	+428	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 1.6 miles upstream of U.S. 64	+445	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Harlands Creek	At the confluence with Rocky River	+331	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 800 feet upstream of U.S. 64	+428	
Harris Reservoir	For its entire shoreline	+232	Chatham County (Unincorporated Areas).
Harts Creek	At the confluence with Bear Creek	+357	Chatham County (Unincorporated Areas)
	Approximately 1.6 miles upstream of the confluence with Bear Creek.	+403	
Haw River	At the confluence with Deep River and Cape Fear River.	+177	Chatham County (Unincorporated Areas), Town of Pittsboro
	Approximately 0.9 mile upstream of the confluence of Terrells Creek (West) at the Alamance and Chatham County boundary.	+400	
Herndon Creek	At the confluence with Bush Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Jack Bennett Road.	+251	
Hill Creek	At the confluence with Robeson Creek	+369	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 300 feet upstream of X-Campbell Road.	+511	Chatham County (Unincorporated Areas), Town of Pittsboro.
Indian Creek (into Deep River)	At the confluence of Deep River	+240	Chatham County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Goldston Glendon Road.	+336	
Indian Creek (into Jordan Lake)	Approximately 1.1 miles upstream of State Highway 751.	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	
Kit Creek	At the confluence with Northeast Creek	+238	Chatham County (Unincorporated Areas).
	At Chatham and Wake County	+243	
Lacy Creek	At the confluence with Rocky River	+539	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.7 mile upstream of confluence with Rocky River.	+565	
Landrum Creek	At the confluence with Rocky River	+337	Chatham County (Unincorporated Areas).
	Approximately 500 feet upstream of Pleasant Hill Church Road.	+500	
Landrum Creek Tributary	At the confluence with Landrum Creek	+456	Chatham County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Jay Shambley Road.	+468	
Lick Branch	Approximately 1,200 feet upstream of State Highway 751.	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	
Lick Creek	At the confluence with Terrells Creek (West)	+424	Chatham County (Unincorporated Areas).
	Approximately 2.4 miles upstream of the confluence with Terrells Creek (West).	+473	
Line Creek	At the confluence with Deep River	+250	Chatham County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Goldston Carbanton Road.	+271	
Little Beaver Creek	Approximately 1.0 mile upstream of the confluence with B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas)
Little Beaver Creek Tributary	Approximately 0.7 mile upstream of the confluence with Little Beaver Creek.	+238	Chatham County (Unincorporated Areas).
	At the confluence with Little Beaver Creek	+238	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Little Brush Creek	At the Chatham and Randolph County boundary.	+454	Chatham County (Unincorporated Areas). Town of Siler City
	Approximately 1.6 miles upstream of Jim Paige Road.	+543	
Little Indian Creek	At the confluence with Indian Creek (into Deep River).	+240	Chatham County (Unincorporated Areas).
	Approximately 900 feet upstream of Goldston Glendon Road.	+378	
Long Branch	At the confluence with Dry Creek	+448	Chatham County (Unincorporated Areas).
	Approximately 1.5 miles upstream of State Route 87.	+497	
Loves Creek	At the confluence with Rocky River	+501	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.1 mile upstream of Pine Forest South Drive.	+605	
Loves Creek Tributary 1	At the confluence with Loves Creek	+557	Town of Siler City.
	Approximately 400 feet upstream of U.S. 64	+620	
Loves Creek Tributary 2	At the confluence with Loves Creek Tributary 1	+585	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.6 mile upstream of West Dolphin Street.	+666	
Loves Creek Tributary 3	At the confluence with Loves Creek Tributary 1	+592	Town of Siler City.
	Approximately 400 feet upstream of Garden Avenue.	+648	
Meadow Branch	At the confluence with Terrells Creek	+381	Chatham County (Unincorporated Areas).
	Approximately 350 feet upstream of Jones Ferry Road.	+389	
Meadow Creek	At the confluence with Rocky River	+437	Chatham County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Rives Chapel Church Road.	+506	
Mill Branch	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with B. Everett Jordan Lake.	+244	
Morgan Creek	At the Chatham and Durham County boundary	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	
Morris Branch	At the confluence with Panther Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Panther Creek.	+249	
Mud Lick Creek	At the confluence with Rocky River	+544	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Silk Hope Liberty Road.	+597	
Nancy Branch	At the confluence with Panther Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Panther Creek.	+239	
New Hope River Tributary 1	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 0.3 mile upstream of B. Everett Jordan Lake.	+247	
North Prong Rocky River	At the confluence with Rocky River	+587	Chatham County (Unincorporated Areas).
	At the Alamance and Chatham County boundary.	+648	
Northeast Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	At the Chatham and Durham County boundary	+240	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Overcup Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 1.1 miles upstream of B. Everett Jordan Lake.	+253	
Overcup Creek Tributary	At the confluence with Overcup Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Overcup Creek.	+245	
Panther Creek	At the confluence with Northeast Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence of Morris Branch.	+244	
Parkers Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Big Woods Road.	+287	
Persimmons Nursery Branch	At the confluence with Collins Creek	+448	Chatham County (Unincorporated Areas).
	Approximately 550 feet upstream of Collins Mountain Road.	+450	
Pokeberry Creek	At the confluence with Haw River	+297	Chatham County (Unincorporated Areas).
	Approximately 3.5 miles upstream of Andrews Store Road.	+558	
Reedy Fork	At the Chatham and Randolph County boundary.	+499	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.4 mile upstream of Wrenn Smith Road.	+527	
Robeson Creek	At the confluence with the Haw River and B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 0.3 mile upstream of the Power Line Easement.	+481	
Robeson Creek Tributary 1	At the confluence with Robeson Creek	+297	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 0.3 mile upstream of Prince Creek Road.	+486	
Robeson Creek Tributary 2	At the confluence with Robeson Creek Tributary 1.	+349	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 475 feet upstream of Tom Womble Road.	+502	
Robeson Creek Tributary 3	At the confluence with Robeson Creek	+352	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 0.3 mile upstream of Oakwood Street.	+419	
Robeson Creek Tributary 4	At the confluence with Robeson Creek	+377	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 320 feet upstream of State Route 87.	+497	
Robeson Creek Tributary 5	At the confluence with Robeson Creek Tributary 4.	+391	Chatham County (Unincorporated Areas), Town of Pittsboro.
	Approximately 1.0 mile upstream of Arthur Alston Road.	+471	
Rocky Branch (into Deep River)	At the confluence with Deep River	+204	Chatham County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Deep River.	+222	
Rocky Branch (into Georges Creek)	At the confluence with Georges Creek	+232	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Rosser Road.	+256	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Rocky Ford Branch	At the confluence with White Oak Branch	+238	Chatham County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Luther Road.	+244	
Rocky River	At the confluence with Deep River	+209	Chatham County (Unincorporated Areas), Town of Siler City.
	At the Chatham and Randolph County boundary.	+643	
Rocky River Tributary 1	At the confluence with Rocky River	+507	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 1.0 mile upstream of Siler City Snow Camp Road.	+630	
Sandy Branch	At the confluence with Bear Creek	+410	Chatham County (Unincorporated Areas).
	Approximately 200 feet upstream of State Route 902.	+425	
Shaddox Creek	At the confluence with Haw River	+177	Chatham County (Unincorporated Areas).
	Approximately 2.5 miles upstream of U.S. Route 1.	+214	
South Fork	At the Alamance and Chatham County boundary.	+525	Chatham County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Moon Lindley Road.	+550	
Stinking Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 450 feet upstream of Talon Drive.	+279	
Terrells Creek	At the confluence with Haw River	+369	Chatham County (Unincorporated Areas).
	At the Chatham and Orange County boundary	+420	
Terrells Creek (West)	At the confluence with Haw River	+397	Chatham County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Woody Store Road.	+530	
Tick Creek	At the confluence with Rocky River	+407	Chatham County (Unincorporated Areas).
	Approximately 300 feet upstream of Siler City Glendon Road.	+555	
Tick Creek Tributary	At the confluence with Tick Creek	+468	Chatham County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Tick Creek.	+480	
Tick Creek Tributary 1	At the confluence with Tick Creek	+498	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 0.9 mile upstream of Mount Vernon Springs Road.	+531	
Tributary A	At the confluence with Indian Creek (into Deep River).	+240	Chatham County (Unincorporated Areas).
	Approximately 350 feet upstream of Little Indian Creek Road.	+258	
Turkey Creek	At the confluence with Robeson Creek	+324	Chatham County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Unnamed Road.	+452	
Tysons Creek	At the Chatham and Moore County boundary	+322	Chatham County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Mert McManess Road.	+414	
Tysons Creek Tributary	At the confluence with Tysons Creek	+341	Chatham County (Unincorporated Areas).
	Approximately 0.8 mile upstream of State Route 42.	+386	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Varnell Creek	At the confluence with Rocky River	+485	Chatham County (Unincorporated Areas), Town of Siler City.
	Approximately 2.3 miles upstream of U.S. 64	+528	
Weaver Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 2.1 miles upstream of B. Everett Jordan Lake.	+297	
Weaver Creek Tributary	At the confluence with Weaver Creek	+238	Chatham County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Weaver Creek.	+245	
Welch Creek	At the confluence with Tick Creek	+466	Chatham County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Tick Creek.	+478	
West Price Creek	At the Chatham/Orange County boundary	+467	Chatham County (Unincorporated Areas).
	Approximately 1,930 feet upstream of the Chatham/Orange County boundary.	+480	
White Oak Creek	At the Chatham and Wake County boundary	+238	Chatham County (Unincorporated Areas).
	At the confluence with B. Everett Jordan Lake	+238	
White Oak Creek Tributary 1	At the confluence with White Oak Creek and B. Everett Jordan Lake.	+238	Chatham County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with White Oak Creek and B. Everett Jordan Lake.	+253	
Wilkinson Creek	At the confluence with the Haw River	+330	Chatham County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Gilmore Road.	+575	
Windfall Creek	At the confluence with B. Everett Jordan Lake	+238	Chatham County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with B. Everett Jordan Lake.	+248	

*National Geodetic Vertical Datum
#Depth in feet above ground
+North American Vertical Datum

ADDRESSES:

Town of Pittsboro:

Maps available for inspection at the Pittsboro Planning Office, Town Hall, 635 East Street, Pittsboro, North Carolina.

Town of Siler City:

Maps available for inspection at the Siler City Zoning Office, Town Hall, 311 North Second Avenue, Siler City, North Carolina.

Chatham County (Unincorporated Areas):

Maps available for inspection at the Chatham County Planning Department, 80–A East Street, Pittsboro, North Carolina.

Orange County, North Carolina and Incorporated Areas
(FEMA Docket Nos. D–7622, D–7640, D–7660, and D–7662)

Back Creek	At the Alamance County/Orange County boundary.	+559	Orange County (Unincorporated Areas).
	Approximately 300 feet downstream of Carr Store Road.	+648	
Back Creek Tributary 3	At the confluence with Back Creek	+575	Orange County (Unincorporated Areas).
	Approximately 300 feet downstream of Harmony Church Road.	+646	
Battle Branch	At the confluence with Bolin Creek	+263	Town of Chapel Hill.
	Approximately 1.5 miles upstream of the confluence with Bolin Creek.	+387	
Bolin Creek	At the confluence with Little Creek and Booker Creek.	+255	Orange County (Unincorporated Areas), Town of Carrboro, Town of Chapel Hill.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
	Approximately 1,250 feet upstream of Talbryn Way.	+578	
Booker Creek	At the confluence with Little Creek and Bolin Creek.	+255	Town of Chapel Hill.
	Approximately 600 feet upstream of Airport Road.	+479	
Buckhorn Branch	At the confluence with Jones Creek	+483	Orange County (Unincorporated Areas), Town of Carrboro.
	Approximately 300 feet upstream of dam	+509	
Cane Creek (North)	Approximately 1,000 feet upstream of the confluence with Haw River.	+429	Orange County (Unincorporated Areas).
	Approximately 125 feet upstream of Borland Road.	+606	
Cane Creek (North) Tributary No. 5	At the confluence with Cane Creek (North)	+543	Orange County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Orange Grove Road.	+575	
Cates Creek	Approximately 1,800 feet upstream of the confluence with Eno River.	+499	Town of Hillsborough, Orange County (Unincorporated Areas).
	Approximately 0.8 mile upstream of U.S. Highway 40.	+659	
Cates Creek Tributary	At the confluence with Cates Creek	+595	Town of Hillsborough, Orange County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Oak Ridge Drive.	+663	
Cedar Fork	At North Lakeshore Drive	+309	Town of Chapel Hill.
	Approximately 600 feet upstream of Kingston Drive.	+554	
Chapel Creek	Approximately 2,100 feet upstream of the confluence with Morgan Creek.	+261	Town of Chapel Hill.
	Approximately 350 feet upstream of South Road.	+419	
Collins Creek	At the Orange County/Chatham County boundary.	+451	Orange County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Big Still Road.	+536	
Collins Creek Tributary 1	At the confluence with Collins Creek	+487	Orange County (Unincorporated Areas).
	Approximately 650 feet upstream of Gait Way	+524	
Crabtree Creek	At the confluence with Sevenmile Creek	+539	Orange County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with Sevenmile Creek.	+602	
Crow Branch	At the confluence with Booker Creek	+400	Town of Chapel Hill.
	Approximately 0.5 mile upstream of dam	+500	
Cub Creek	Approximately 250 feet downstream of the Orange County/Chatham County boundary.	+257	Orange County (Unincorporated Areas).
	Approximately 200 feet upstream of the Orange County/Chatham County boundary.	+265	
Dry Creek	Approximately 250 feet upstream of the confluence with Eno River.	+552	Orange County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Eno River.	+589	
East Fork Eno River	Approximately 215 feet upstream of Carr Store Road (NC 1352).	+628	Orange County (Unincorporated Areas).
	Approximately 100 feet downstream of NC 86	+668	
East Fork Eno River Tributary 1	Approximately 0.3 mile upstream of the confluence with East Fork Eno River.	+595	Orange County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with East Fork Eno River.	+627	
East Fork Eno River Tributary 2	Approximately 0.5 mile upstream of the confluence with East Fork Eno River.	+618	Orange County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Carr Store Road (NC 1352).	+655	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Forrest Creek	Approximately 200 feet upstream of NC 57	+595	Orange County (Unincorporated Areas).
	Approximately 125 feet upstream of Phelps Road.	+644	
Haw River	At the Orange/Chatham County boundary	+415	Orange County (Unincorporated Areas).
	Approximately 1.2 miles upstream of East Greensboro-Chapel Hill Road.	+429	
High Rock Creek	Approximately 500 feet upstream of the confluence with Eno River.	+561	Orange County (Unincorporated Areas).
	Approximately 1,500 feet upstream of North Efland Cedar Grove Road.	+640	
Jones Creek	Approximately 0.4 mile upstream of the confluence with Bolin Creek.	+482	Town of Carrboro, Orange County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Old NC 86	+571	
Lake Michael Tributary	At the confluence with Mill Creek	+580	Orange County (Unincorporated Areas).
	Approximately 1,300 feet upstream of Lancaster Road.	+693	
Lake Michael Tributary 2	At the confluence with Lake Michael Tributary	+637	Orange County (Unincorporated Areas).
	Approximately 400 feet north of U.S. 70	+694	
Lick Creek	Approximately 750 feet downstream of Gray Road.	+545	Orange County (Unincorporated Areas).
	Approximately 1,600 feet upstream of Holly Ridge Road.	+576	
Little Creek (Chapel Hill)	At the Orange County/Durham County boundary.	+249	Town of Chapel Hill.
	Approximately 1,000 feet downstream of the confluence with Booker Creek and Bolin Creek.	+253	
Little Creek (Chapel Hill) Tributary 3	At the confluence with Little Creek (Chapel Hill)	+251	Town of Chapel Hill.
	At Elderberry Drive	+310	
Little River North Fork	Approximately 280 feet upstream of NC 57	+580	Orange County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Hester Road.	+671	
Little River North Fork Tributary 2	At the confluence with Little River North Fork	+591	Orange County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Gates Road.	+607	
Little River North Fork Tributary 3	At the confluence with Little River North Fork	+544	Orange County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Sneed Road.	+564	
Little River South Fork	Approximately 200 feet upstream of NC 57	+552	Orange County (Unincorporated Areas).
	Approximately 60 feet upstream of Hawkins Road.	+637	
McGowan Creek	Approximately 1,600 feet upstream of the confluence with Eno River.	+549	Orange County (Unincorporated Areas).
	Approximately 300 feet upstream of Frazier Road.	+690	
Meeting of the Waters Creek	At the confluence of Morgan Creek	+262	Town of Chapel Hill.
	Approximately 0.6 mile upstream of Woodbine Drive.	+341	
Mill Creek	At the confluence with Lake Michael Tributary	+580	Orange County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Mill Creek Road.	+658	
Mill Creek Tributary	At the confluence with Mill Creek	+613	Orange County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Lee Street	+656	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Morgan Creek	Approximately 2.7 miles downstream of the Orange County/Chatham County boundary.	+238	Orange County (Unincorporated Areas), Town of Carrboro, Town of Chapel Hill.
	Approximately 50 feet downstream of Dairyland Road.	+559	
Mountain Creek	Approximately 1,100 feet upstream of the confluence with New Hope Creek.	+474	Orange County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence with New Hope Creek.	+506	
New Hope Creek	Approximately 200 feet upstream of Old NC 86	+497	Orange County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Arthur Minnis Road.	+529	
New Hope Creek Tributary 1	Approximately 400 feet downstream of the Orange County/Durham County boundary.	+264	Orange County (Unincorporated Areas), Town of Chapel Hill.
	Approximately 1,800 feet upstream of confluence with Dry Branch.	+297	
Price Creek	At the confluence with University Lake	+358	Orange County (Unincorporated Areas).
	Approximately 350 feet upstream of Damascus Church Road.	+359	
Rays Creek	At the confluence with Little River South Fork	+593	Orange County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Walnut Grove Church Road.	+632	
Rays Creek Tributary	At the confluence with Rays Creek	+607	Orange County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Walnut Grove Church Road.	+628	
Rhodes Creek	Approximately 850 feet upstream of Cornwallis Road.	+449	Orange County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Cornwallis Road.	+507	
Sevenmile Creek	Approximately 350 feet upstream of Interstate 85.	+533	Orange County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Pender Drive.	+622	
Sevenmile Creek Tributary 1	At the confluence with Sevenmile Creek	+539	Orange County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Sevenmile Creek.	+598	
Sevenmile Creek Tributary 2	At the confluence with Sevenmile Creek	+591	Orange County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Bushy Cook Road.	+642	
South Hyco Creek	At the Caswell County/Orange County boundary.	+589	Orange County (Unincorporated Areas).
	Approximately 0.95 mile upstream of County boundary.	+642	
South Hyco Creek Tributary 8	At the Person County/Orange County boundary	+603	Orange County (Unincorporated Areas).
	Approximately 0.5 mile upstream of County boundary.	+620	
Stagg Creek	At the Alamance/Orange County boundary	+606	Orange County (Unincorporated Areas).
	Approximately 3,000 feet upstream of Atkins Road.	+639	
Strouds Creek	Approximately 600 feet upstream of the confluence with Eno River.	+485	Orange County (Unincorporated Areas).
	Approximately 2,000 feet upstream of NC 86	+659	
Strouds Creek Tributary 1	Approximately 1,760 feet downstream of NC 57.	+590	Orange County (Unincorporated Areas).
	Approximately 1,080 feet upstream of Phelps Road.	+656	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Strouds Creek Tributary 2	At the confluence with Strouds Creek	+519	Orange County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Miller Road.	+574	
Strouds Creek Tributary 3	At the confluence with Strouds Creek	+551	Town of Hillsborough, Orange County (Unincorporated Areas)
	Approximately 0.5 mile upstream of NC 57	+636	
Terrells Creek	At the Orange County/Chatham County boundary.	+421	Orange County (Unincorporated Areas).
	Approximately 2.2 miles upstream of the County boundary.	+498	
Tributary 1 to Sevenmile Creek	At the confluence with Sevenmile Creek Tributary 2.	+627	Orange County (Unincorporated Areas).
Tributary 2	Approximately 950 feet upstream of Bushy Cook Road.	+631	Orange County (Unincorporated Areas).
Toms Creek	Approximately 50 feet upstream of NC 54	+418	Town of Carrboro.
	Approximately 700 feet upstream of Rainbow Drive.	+468	
Toms Creek (Apple Pond)	At the confluence with Cane Creek (North)	+501	Orange County (Unincorporated Areas).
	Approximately 1,800 feet upstream of Nicks Road.	+558	
Turkey Hill Creek	At the confluence with Cane Creek (North)	+511	Orange County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Private Road.	+610	
University Lake (Price Creek)	Entire shoreline within communities	+358	Orange County (Unincorporated Areas), Town of Carrboro.
Watery Fork	At the confluence with Cane Creek (North)	+501	Orange County (Unincorporated Areas).
	Approximately 250 feet upstream of Dairyland Road.	+553	
West Fork Eno River	Approximately 200 feet upstream of North Efland Cedar Grove Road.	+592	Orange County (Unincorporated Areas).
	Approximately 350 feet upstream of McDade Store Road.	+672	
West Fork Eno River Tributary 1	Approximately 600 feet upstream of the confluence with Eno River.	+579	Orange County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Harmony Church Road.	+650	
West Fork Eno River Tributary 2	At the confluence with West Fork Eno River	+595	Orange County (Unincorporated Areas).
	Approximately 1,500 feet upstream of Governor Scott Road.	+623	
West Fork Eno River Tributary 3	At the confluence with West Fork Eno River	+643	Orange County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with West Fork Eno River.	+681	
Wildcat Branch	At the confluence with Collins Creek	+475	Orange County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Wildcat Creek Road.	+506	

*National Geodetic Vertical Datum
#Depth in feet above ground
+North American Vertical Datum

ADDRESSES:

Town of Carrboro:

Maps available for inspection at the Town of Carrboro Planning Department, 301 West Main Street, Carrboro, North Carolina.

Town of Chapel Hill:

Maps available for inspection at the Town of Chapel Hill Stormwater Management Program Office, 209 North Columbia Street, Chapel Hill, North Carolina.

Town of Hillsborough:

Maps available for inspection at the Hillsborough Town Hall, 101 East Orange Street, Hillsborough, North Carolina.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground Modified	Communities affected
Orange County (Unincorporated Areas):			
Maps available for inspection at the Orange County Planning and Inspections Department, 306F Revere Road, Hillsborough, North Carolina.			

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 5, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17261 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR Part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR Part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). Modified
KENTUCKY (FEMA Docket No. B–7454)				
Kentucky	Louisville Metro	Anita Branch	At confluence with Pennsylvania Run	+535

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). Modified
			Approximately 240 feet upstream of Cedar Creek Road.	+614
	Louisville Metro	Blue Springs Ditch	At confluence with Northern Ditch	+460
			Approximately 650 feet downstream of Fern Valley Road.	+462
			Just upstream of Fern Valley Road	+463
			Approximately 80 feet downstream of Hanses Drive.	+465
			Approximately 330 feet downstream of Jefferson Boulevard.	+467
			Approximately 1,570 feet upstream of Jefferson Boulevard.	+470
	Louisville Metro	Brownsboro Ditch	At confluence with Little Goose Creek	+583
			Approximately 70 feet upstream of Ten Broeck Way.	+583
	Louisville Metro	Brush Run Upper	At confluence with Floydes Fork	+597
			Approximately 530 feet upstream of Polo Fields Lane.	+655
	City of Shively	City Park Ditch	At confluence with Upper Mill Creek	+448
			Approximately 300 feet upstream of Olenda Way	+448
	Louisville Metro	Drews Fork	At confluence with Lovvorn Creek	+600
			Approximately 280 feet upstream of Cooper Chapel Road.	+629
	Louisville Metro	Durbin Branch	At confluence with Lovvorn Creek	+595
			Approximately 120 feet upstream of Cooper Chapel Road.	+633
	Louisville Metro	Fishpool Creek	At confluence with Southern Ditch	+462
			Approximately 1,570 feet upstream of Blue Lick Road.	+467
			Approximately 950 feet Downstream of South Park Road.	+472
			Approximately 1,320 feet upstream of Charleswood Road.	+571
			Approximately 20 feet upstream of Cooper Chapel Road.	+582
			Approximately 2,000 feet upstream of Cooper Chapel Road.	+594
	Louisville Metro	Floyds Fork	Approximately 29,700 feet downstream of Bardstown Road.	+475
			Approximately 1,600 feet upstream of Broad Run Road.	+496
			Approximately 7,910 feet downstream of confluence with Cane Run.	+521
			Approximately 3,400 feet upstream of confluence with Cane Run.	+534
			Approximately 4,970 feet downstream of Taylorsville Lake Road.	+548
			Approximately 1,930 feet downstream of Taylorsville Lake Road.	+552
			Approximately 1,740 feet downstream of Taylorsville Road.	+559
			Approximately 3,570 feet upstream of Taylorsville Road.	+568
			Approximately 3,100 feet downstream of I–64 East.	+581
			Approximately 330 feet downstream of Shelbyville Road.	+596
			Approximately 7,700 feet upstream of CSX Railroad.	+612
			Approximately 12,300 feet upstream of Aiken Road.	+628
	Louisville Metro	Gene Snyder Tributary	At confluence with Pennsylvania Run	+595
			Approximately 500 feet upstream of I–265 North	+608
	Louisville Metro	Goose Creek	Just upstream of Lakeland Road	+661
			Approximately 220 feet downstream of Cave Spring Place.	+707

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). Modified
	Louisville Metro	Harrods Creek	At confluence with Ohio River	+452
			Approximately 22,400 feet upstream of Brownsboro Road.	+452
	City of Shively	Heatherfield Ditch	At confluence with Upper Mill Creek	+447
			Just downstream of Heatherfield Drive	+447
	Louisville Metro	Hite Creek	Approximately 2,850 feet downstream of Worthington Lane.	+599
			Approximately 820 feet upstream of Collins Lane	+734
	Louisville Metro	LeFores Branch	At confluence with Goose Creek	+668
			Approximately 1,140 feet upstream of confluence with Goose Creek.	+677
	Louisville Metro	Lilac Run	At confluence with Little Goose Creek	+628
			Approximately 1,780 feet upstream of Wynbrooke Cirle.	+667
	Louisville Metro	Little Goose Creek	Approximately 580 feet downstream of I–71 South.	+548
			Approximately 300 feet upstream of Westport Road.	+651
	Louisville Metro	Long Run Creek	At confluence with Floyds Fork	+569
			Approximately 830 feet upstream of Long Run Road.	+653
	Louisville Metro	Lovvorn Creek	At confluence with Pennsylvania Run	+578
			Approximately 170 feet upstream of Beulah Church Road.	+652
	Louisville Metro	Northern Ditch	At confluence with Pond Creek	+455
			Approximately 1,910 feet downstream of Preston Highway.	+459
			Approximately 1,840 feet upstream of Preston Highway.	+463
			Approximately of 410 feet upstream of Shepherdsville Road.	+480
	Louisville Metro	Pennsylvania Run	Approximately 900 feet downstream of Mt. Washington Road.	+528
			Approximately 920 feet upstream of Outer Loop	+648
	Louisville Metro	Pohlmann Branch	At confluence with Pennsylvania Run	+602
			Approximately 160 feet upstream of Beulah Church Road.	+657
	Louisville Metro	Pond Creek	Approximately 6,500 feet downstream of Stites Station Road.	+430
			Approximately 870 feet upstream of Blenvins Gap Road.	+433
			Approximately 1,000 feet downstream of Stonestreet Road.	+445
			Approximately 1,800 feet upstream of New Cut Road.	+455
	Louisville Metro	Rolling Hills Branch	At confluence with Little Goose Creek	+590
			Approximately 180 feet upstream of Goose Creek Road.	+608
	Louisville Metro, City of West Buechel, City of Jeffersontown.	South Fork Beargrass Creek.	At pump station	+433
			Approximately 50 feet upstream of Baxter Avenue.	+449
			Approximately 170 feet upstream of Ellison Avenue.	+456
			Approximately 6,100 feet upstream of Eastern Parkway.	+460
			Approximately 360 feet upstream of Goldsmith Lane (1st crossing).	+470
			Approximately 760 feet downstream of Bashford Manor Lane.	+472
			Approximately 240 feet upstream of Bashford Manor Lane.	+472
			Approximately 100 feet downstream of Bardstown Road.	+475
			Approximately 80 feet upstream of Bardstown Road.	+478

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). Modified
			Approximately 40 feet downstream of Hikes Lane.	+491
			Approximately 260 feet upstream of Breckenridge Lane.	+511
			Approximately 3,270 feet upstream of Hunsinger Lane.	+533
			Approximately at Brybed Reservoir	+564
			Approximately 1,500 feet downstream of Stony Brook Drive.	+564
			Just downstream Taylorville Road	+634
	Louisville Metro	Southern Ditch	At confluence with Pond Creek	+455
			Approximately 960 feet downstream of Minors Lane.	+459
			Approximately 1,620 feet downstream of Outer Loop (1st crossing).	+472
			Approximately 490 feet downstream of Gayeway Drive.	+506
			Approximately 310 feet upstream of Gayeway Drive.	+517
			Approximately 30 feet upstream of Shepherdsville Road.	+531
			Approximately 60 feet downstream of Michael Ray Drive.	+561
			Approximately 790 feet upstream of Michael Ray Drive.	+576
			Approximately 1,350 feet upstream of Michael Ray Drive.	+586
	Louisville Metro	Springhurst Creek	At confluence with Little Goose Creek	+588
			Approximately 350 feet upstream of Ten Broeck Way.	+591
	Louisville Metro City of Matthews.	Weicher Creek	At confluence with Middle Fork Beargrass Creek	+508
			Approximately 100 feet downstream of I–264 West Ramp.	+517
			Approximately 20 feet upstream of Blossomwood Drive.	+522
			Approximately 600 feet upstream of Woodmont Drive.	+537
			Approximately 190 feet upstream of Dannywood Road.	+545
			Approximately 290 feet upstream of Lincoln Road.	+550
			Approximately 820 feet upstream of Lincoln Road.	+555
			Approximately 3,870 feet upstream of Limehouse Lane.	+647
	Louisville Metro	Wet Woods Creek	At confluence with Southern Ditch	+457
			Just downstream of Preston Highway	+461
	Louisville Metro	Wilson Creek	At confluence with Southern Ditch	+456
			Approximately 990 feet upstream of I–265 North	+460
			Approximately 3,290 feet upstream of National Turnpike.	+467
			Approximately 2,260 feet upstream of Farmers Lane.	+477
			Approximately 3,550 feet upstream of Farmers Lane.	+480
			Approximately 4,700 feet downstream of National Turnpike.	+524

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). Modified

ADDRESSES

Louisville Metro

Maps are available for inspection at Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, Kentucky 40203–1911.

Send comments to Mr. Randy Stambaugh, P.E., CFM, Floodplain Administrator, Louisville/Jefferson County Metropolitan Sewer District, 700 West Liberty Street, Louisville, Kentucky 40203–1911.

City of Jeffersontown

Maps are available for inspection at Jeffersontown City Hall, 10416 Watterson Trail, Jeffersontown, Kentucky 40299.

Send comments to Honorable Clay Foreman, Mayor, Jeffersontown City Hall, 10416 Watterson Trail, Jeffersontown, Kentucky 40299.

City of Shively

Maps are available for inspection at Shively City Hall, 3920 Dixie Highway, Louisville, Kentucky 40216–4120.

Send comments to Honorable Sherry Conner, Mayor, Shively City Hall, 3920 Dixie Highway, Louisville, Kentucky 40216–4120.

City of Matthews

Maps are available for inspection at St. Matthews City Hall, 3940 Grandview Avenue, Louisville, Kentucky 40207.

Send comments to Honorable Arthur Draut, Mayor, St. Matthews City Hall, 3940 Grandview Avenue, Louisville, Kentucky 40207.

City of West Buechel

Maps are available for inspection at West Buechel City Hall, 3705 Bashford Avenue, Louisville, Kentucky 40218.

Send comments to Honorable Sharon Fowler, Mayor, West Buechel City Hall, 3705 Bashford Avenue, Louisville, Kentucky 40218.

POLK COUNTY, OREGON
FEMA Docket No. B–7453)

Oregon	Polk County (Uninc. Areas).	North Fork Ash Creek	Confluence with Middle Fork Ash Creek	+177
	City of Independence, City of Monmouth Polk County (Uninc. Areas).	Ash Creek	At Hoffman Road	+180
			Approximately 100 feet downstream of Gun Club Road.	+167
			At Confluence of Middle Fork Ash Creek and North Fork Ash Creek.	+177
	City of Independence City of Monmouth polk County (Uninc. Areas).	Ash Creek Overflow Channel.	At Confluence with Ash Creek	+168
			At divergence from Ash Creek	+177

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Unincorporated Areas of Polk County

Maps are available for inspection at the Community Development, 850 Main Street, Dallas, Oregon 97338.

Send comments to Chairman, Ron Dodge, 850 Main Street, Dallas, Oregon 97338.

City of Independence

Maps are available for inspection at Community Development, 240 Monmouth Street, Independence, Oregon 97351

Send comments to the Honorable John McArdle, 240 Monmouth Street, Independence, Oregon 97351.

City of Monmouth

Maps are available for inspection at Community Development, 240 Monmouth Street, Independence, Oregon 97351.

Send comments to the Honorable Larry Dalton, 151 West Main Street, Monmouth, Oregon 97361.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). +( ) Pond Elevation in NAVD. Modified	Communities affected
Larimer County, Colorado and Incorporated Areas (FEMA Docket No. B–7458)			
Big Thompson River	Approximately 800 feet upstream of Larimer-Weld County Line.	+4,812	Larimer County (Unincorporated Areas), City of Loveland, Town of Johnstown.
	Approximately 800 feet upstream of County Road 3	+4,829	
	Just upstream of I–25	+4,852	
	Approximately 0.4 miles upstream of County Road 3	+4,880	
	Approximately 150 feet upstream of Boyd Lake Outlet Ditch	+4880	
	Approximately 300 feet west of Lincoln Avenue and approximately 1,700 feet west of St. Louis Avenue.	#2	
	Just downstream of St. Louis Avenue	+4,923	
	Just upstream of St. Louis Avenue	+4,924	
	Just east of Taft Avenue to 900 feet west of Taft Avenue Garfield Avenue.	#1	
	South of Dry Creek and north of Rossum Drive	#3	
	Approximately 1,400 feet upstream of confluence of Dry Creek.	+5,046	
	Southwest of U.S. Highway 34	#2	
	Just downstream of confluence with Buckhorn Creek	+5,097	
Big Thompson River—South Spill.	At confluence with Big Thompson River	+4,938	Larimer County (Unincorporated Areas) and City of Loveland.
	Just upstream of Taft Avenue	+4,970	
Big Thompson River—Gravel Pit Split.	At confluence with Big Thompson River	+4,888	Larimer County (Unincorporated Areas).
	Approximately 1,900 feet upstream of confluence with Big Thompson River.	+4,899	
Big Thompson River Overflow	Just upstream of confluence with Big Thompson River	+5,047	Larimer County (Uninc. Areas), City of Loveland.
	Approximately 0.4 miles upstream of confluence with Big Thompson River.	+5,078	
Boxelder Creek	Approximately 200 feet upstream above confluence with Cache La Poudre River.	+4,868	City of Fort Collins, Larimer County (Uninc. Areas).
	Approximately 1,000 feet east of Interstate Highway 25	#2	
	Just upstream of Vine Drive	+4,972	
	Just north of Vine Drive	#2	
	Just upstream of County Road 52	+5,024	
	Approximately 500 feet north of County Road 52	#2	
	Approximately 1,000 feet north of County Road 52	#1	
	Just downstream of County Road 54	+5,054	
Boxelder Creek Overflow—Downstream Reach.	Approximately 1,600 feet above confluence with Boxelder Creek.	+4,933	City of Fort Collins, Larimer County (Unincorporated Areas).
	Limit of Detailed Study (Approximately 2.1 miles above confluence with Boxelder Creek).	+4,975	
Boxelder Creek Overflow—Upstream Reach.	Above Larimer and Weld Canal	+4,982	City of Fort Collins, Larimer County (Unincorporated Areas).
	Limit of Detailed Study (Approximately 2.3 miles above Larimer and Weld Canal).	+5,038	
Boxelder Creek I–25 Split	Approximately 500 feet upstream of Larimer County Road 5	+4,875	City of Fort Collins, Larimer County (Unincorporated Areas).
	Limits of Detailed Study (Approx. 3.1 miles upstream of Larimer County Road 5).	+4,921	
Boxelder Creek I–25 Split Overflow.	Approximately 600 feet upstream of confluence with Boxelder Creek.	+4,890	City of Fort Collins, Larimer County (Unincorporated Areas).
	Approximately 1,500 feet upstream of confluence with Boxelder Creek.	+4,894	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). +( ) Pond Elevation in NAVD. Modified	Communities affected
Cache La Poudre River	Approximately 1,500 feet downstream from Shields Street	+4982	City of Fort Collins, Larimer County (Unincorporated Areas).
	Just west of Shields Street to approximately 500 feet west of Shields Street.	+(5,000)	
	Approximately 500 feet west of Shields Street	#2	
	Approximately 2,000 feet downstream of Overland Trail Road	+5,048	
	Approximately 1,000 feet upstream of Overland Trail Road	+5,063	
	Appoximately 1,800 feet upstream of County Road 52E	+5,119	
Cache La Poudre River Split RPath.	At Gravel Pit Access Road	+4,884	City of Fort Collins, Larimer County (Unincorporated Areas).
	Approximately 0.7 miles above Gravel Pit Access Road	+4,900	
Cache La Poudre River Split LPath.	Approximately 0.5 miles above Gravel Pit Access Road	+4,896	City of Fort Collins, Larimer County (Unincorporated Areas).
	Approximately 0.6 miles above Gravel Pit Access Road	+4,898	
Cooper Slough	Approximately 800 feet upstream of State Highway 14	+4,922	City of Fort Collins, Larimer County (Unincorporated Areas).
	Approximately 600 feet south of C and S Railroad	#2	
	Approximately 1,200 feet north of Vine Drive to approximately 1,800 feet north of Vine Drive.	+(4964)	
	Approximately 0.6 miles upstream of Vine Drive	+4,972	
Cooper Slough Overflow	Just south of confluence with Lake Canal and just north of Cache La Poudre Inlet Ditch.	#3	City of Fort Collins, Larimer County (Unincorporated Areas).
	At confluence with Lake Canal	+4,917	
	Approximately 0.9 miles upstream of confluence with Lake Canal.	+4,936	
Dry Creek	Just upstream of confluence with Big Thompson River	+5,043	City of Loveland.
	Approximately 0.4 miles upstream of confluence with Big Thompson River.	+5,065	
Glade Road Split	Just upstream of confluence with Big Thompson River	+5,047	Larimer County (Unincorporated Areas), City of Loveland.
	Approximately 0.9 miles upstream of confluence with Big Thompson River.	+5,078	
Sherry Drive Overflow	Approximately 1,000 feet upstream of Cache La Poudre Reservoir Inlet Ditch.	+4,918	City of Fort Collins.
	Approximately 1,800 feet upstream of Cache La Poudre Reservoir Inlet Ditch.	+4,920	
Shield Street Divided Flow Path—Hill Pond Road.	Approximately 400 feet downstream of Shire Court	+5,010	City of Fort Collins, Larimer County (Unincorporated Areas).
	South of Gilgalad Way and north of Hill Pond Road	#1	
	Just west of convergence of Hill Pond Road and Windtrail Swale.	#1	
	South of Hill Pond Road and north of Shire Court	#1	
	Approximately 100 feet downstream of Shields Street	+5,021	
Shield Street Divided Flow Path—Shire Court.	Just downstream of Chetwood Court	+5,012	City of Fort Collins, Larimer County (Unincorporated Areas).
	North of Shire court and east of Shields Street	#2	
	Just downstream of Shields Street	+5,024	
Shield Street Divided Flow Path—Windswale Trail.	Approximately 3.8 miles upstream above confluence with Cache La Poudre River.	+5,003	City of Fort Collins, Larimer County (Unincorporated Areas).
	Approximately 4.2 miles upstream above confluence with Cache La Poudre River.	+5,017	
Spring Creek	Approximately 700 feet upstream above confluence with Cache La Poudre River.	+4,905	City of Fort Collins, Larimer County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD). +( ) Pond Elevation in NAVD. Modified	Communities affected
	Around intersection of Prospect Road and Sharp Point Drive	#2	
	North of Prospect Road and East of Timberline Road	+(4,905)	
	Just upstream of Lemay Avenue	+4,947	
	Around intersection of Stuart Street and Stover Street	#3	
	East of C and S Railroad and south of Prospect Court	#2	
	Just upstream of Shields Street	+5,018	
	West of Shields Street	#2	
	Approximately 2,000 feet downstream from Shields Street	#2	
	Just upstream of Taft Hill Road	+5,087	
	Approximately 2.1 miles upstream of Taft Hill Road	+5,173	
	Approximately 2.1 miles upstream of Taft Hill Road	+5,173	

+ North American Vertical Datum.
* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ ( ) Pond Elevation in North American Vertical Datum.

ADDRESSES

Unincorporated Areas Larimer County

Maps are available for inspection at the Larimer County Courthouse, 200 West Oak Street, Fort Collins, Colorado 80521.

Send comments to the Honorable Kathay Rennels, Chair, Larimer County Board of Commissioners, P.O. Box 1190, Fort Collins, Colorado 80522–1190.

City of Loveland

Maps are available for inspection at City Hall, 500 East Third Street, Loveland, Colorado 80537.

Send comments to the Honorable Larry Walsh, Mayor, City of Loveland, 500 East Third Street, Loveland, Colorado 80537.

City of Fort Collins

Maps are available for inspection at the Fort Collins Stormwater Utilities Department, 700 Wood Street, Fort Collins, Colorado 80521.

Send comments to the Honorable Doug Hutchinson, Mayor, City of Fort Collins, 300 LaPorte Avenue, P.O. Box 580, Colorado 80522–0580.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Santa Rosa County, Florida and Incorporated Areas (FEMA Docket No. D–7660)			
Pace Mill Creek	Approximately 1,300 feet downstream of U.S. Route 90	+12	Santa Rosa County (Unincorporated Areas).
	At downstream side of Chumuckla Highway	+127	
Pond Creek	Approximately 500 feet upstream of CSX Railroad	+10	Santa Rosa County (Unincorporated Areas), City of Milton.
	At upstream side of William Norris Road	+68	

+ North American Vertical Datum.
* National Geodetic Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Santa Rosa County (Unincorporated Areas)

Maps available for inspection at the Santa Rosa County Public Services Department, 6051 Old Bagdad Highway, Milton, Florida 32583.

City of Milton

Maps available for inspection at the City of Milton Planning and Development Department, 6738 Dixon Street, Milton, Florida.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Shoshone County, Idaho and Incorporated Areas (FEMA Docket No. B–7660)			
Coeur d'Alene River	At western Shoshone County boundary approximately 800 feet South of Interstate Highway 90.	+2149	Shoshone County (Unincorporated Areas).
	At western Shoshone County boundary on the landward side of the levee at community of Cataldo.	+2155	
	Approximately 15,000 feet upstream from the western Shoshone County boundary.	+2164	
South Fork Coeur d'Alene River	Approximately 1500 feet downstream of Theatre Road	+2225	Shoshone County (Unincorporated Areas), City of Kellogg, City of Smelterville.
	Just downstream of Elizabeth Park Road Bridge	+2343	
South Fork Coeur d'Alene River—North Overbank Reach through Kellogg.	At west Brown Avenue west of Utah Street	+2295	Shoshone County (Unincorporated Areas), City of Kellogg.
	Just north of Interstate Highway 90 after divergence from South Fork Coeur d'Alene River on Cameron Avenue East.	+2310	
South Fork Coeur d'Alene River—South Overbank North Swale Reach.	At the City of Kellogg western corporate limit	+2243	Shoshone County (Unincorporated Areas), City of Kellogg.
	At divergence from South Fork Coeur d'Alene River. Just upstream of Interstate Highway 90 Bridge.	+2284	
South Fork Coeur d'Alene River—South Overbank Smelterville Reach.	Just South of Interstate Highway 90 bridge approximately 1000 feet upstream of Pine Creek confluence.	+2198	Shoshone County (Unincorporated Areas), City of Kellogg, City of Smelterville.
	At confluence of Government Gulch	+2245	
South Fork Coeur d'Alene River—South Overbank South Kellogg Reach.	Approximately 1000 feet downstream of Hill Street	+2284	Shoshone County (Unincorporated Areas), City of Kellogg.
	Approximately 150 feet downstream of divergence from South Fork Coeur d'Alene River, at Division Street.	+2310	
South Fork Coeur d'Alene River—South Overbank South Swale Reach.	Approximately 1500 feet upstream from western corporated limit of the City of Kellogg..	+2251	Shoshone County (Unincorporated Areas), City of Kellogg.
	At the confluence of South Overbank Southwest Kellogg Reach.	+2282	
South Fork Coeur d'Alene River—South Overbank Southwest Kellogg Reach.	At confluence with South Overbank South Swale Reach approximately 200 feet downstream of Bunker Avenue.	+2284	Shoshone County (Unincorporated Areas), City of Kellogg.
	At divergence from South Fork Coeur d'Alene River	+2289	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

Unincorporated areas of Shoshone County

Maps are available for inspection at the Shoshone County Courthouse, 700 Bank Street, Suite 35, Wallace Idaho 83873.
Send comments to Chairman Jim Vergobbi, Shoshone County, 700 Bank Street, Suite 120, Wallace Idaho 83873.

City of Kellogg

Maps are available for inspection at the City Hall, 1007 McKinley Street, Kellogg Idaho 83837.
Send comments to Mayor Mac Pooler, City of Kellogg, 1007 McKinley Street, Kellogg Idaho 83837.

City of Smelterville

Maps are available for inspection at the City Hall, 501 Main Street, Smelterville Idaho 83868.
Send comments to Mayor Tom Benson, City of Smelterville, P.O. Box 200, Smelterville Idaho 83868.

Plymouth County, Massachusetts and Incorporated Areas (FEMA Docket No. D–7662)			
Plymouth Harbor/Plymouth Bay	At Clarks Island	+10	Town of Plymouth.
	Approximately 500 feet north of the intersection of State Route 3A and Clifford Road.	+29	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected

Depth in feet above ground.

ADDRESSES

Town of Plymouth

Maps available for inspection at the Plymouth Town Hall, 11 Lincoln Street, Plymouth, Massachusetts.

Washington County, Missouri and Incorporated Areas
(FEMA Docket No. B–7456)

Mine Breton Creek	Approximately 2,350 feet above confluence with Bates Creek	*860	City of Potosi.
	At Highway P, approximately 9,700 feet above confluence with Bates Creek.	*922	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

City of Potosi

Maps are available for inspection at the Community Map Repository, 121 E. High Street, Potosi, MO.
Send comments to The Honorable Wayne Maulgen, Mayor of the City of Potosi, 121 E. High Street, Potosi, MO 63664.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Bladen County, North Carolina and Incorporated Areas (FEMA Docket Nos. D–7584, D–7560, and D–7660)			
Bakers Creek	At the confluence with Cape Fear River	+54	Bladen County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Owen Hill Road	+79	
Barefoot Swamp	At the confluence with Crawley Swamp	+104	Bladen County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Highway 41	+116	
Big Foot Marsh	At the confluence with Brown Marsh Swamp	+71	Town of Clarkton, Bladen County (Unincorporated Areas).
	Approximately 100 feet downstream of Business 701	+78	
Big Swamp	Approximately 1.8 miles upstream of the confluence of Bryant Swamp.	+99	Bladen County (Unincorporated Areas).
	At the confluence with Big Marsh Swamp	+122	
Black River	At the Bladen/Pender County boundary	+16	Bladen County (Unincorporated Areas).
	At the confluence with South River	+26	
Black Swamp	At the Bladen-Robeson County boundary	+108	Bladen County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Highway 131	+123	
Brown Marsh Swamp	Approximately 1,500 feet upstream of Red Hill Road	+70	Bladen County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Highway 701	+86	
Browns Creek	At the confluence with Cape Fear River	+48	Bladen County (Unincorporated Areas), Town of Elizabethtown.
	Approximately 2.2 miles upstream of Peanut Plant Road	+101	
Browns Creek Tributary	At the confluence with Browns Creek	+96	Bladen County (Unincorporated Areas), Town of Elizabethtown.
	Approximately 0.9 mile upstream of Cromartie Road	+120	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Bryant Swamp	At the Bladen-Robeson County boundary	+96	Town of Bladenboro, Bladen County (Unincorporated Areas).
	Approximately 0.3 mile upstream of State Route 211 Bypass	+107	
Cape Fear River	At the Bladen/Pender County boundary	+18	Bladen County (Unincorporated Areas), Town of Elizabethtown.
	Approximately 190 feet downstream of the Bladen/Cumberland County boundary.	+70	
Carvers Creek	At the confluence with Cape Fear River	+31	Bladen County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Doctor Robinson Road	+61	
Colly Creek	At the Bladen/Pender County boundary	+18	Bladen County (Unincorporated Areas), Town of White Lake.
	Approximately 1,600 feet upstream of Susie Sand Hill Road	+85	
Crawley Swamp	At the Bladen-Robeson County boundary	+100	Bladen County (Unincorporated Areas).
	Approximately 1.0 mile downstream from State Route 410	+108	
Cypress Creek	At the confluence with South River	+62	Bladen County (Unincorporated Areas).
	Approximately 0.5 mile upstream of NC 210	+76	
Donoho Creek	At the confluence with Cape Fear River	+35	Bladen County (Unincorporated Areas).
	Approximately 800 feet upstream of State Route 87	+69	
Doubles Branch	Approximately 200 feet downstream of Burney Ford Road	+81	Bladen County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Burney Ford Road	+89	
Elkton Marsh	At the confluence with Brown Marsh Swamp	+75	Bladen County (Unincorporated Areas).
	Approximately 150 feet downstream of Burney Ford Road	+81	
Ellis Creek	At the confluence with Cape Fear River	+54	Bladen County (Unincorporated Areas).
	Approximately 3.0 miles upstream of Dowd Dairy Road	+75	
Galberry Swamp	At the confluence with Big Marsh Swamp	+122	Bladen County (Unincorporated Areas).
	At the Bladen-Cumberland County boundary	+135	
Georgia Branch	At the confluence with Cape Fear River	+68	Bladen County (Unincorporated Areas).
	Approximately 1.6 miles upstream of Glengerry Hill Road	+128	
Goodman Swamp	At the Bladen-Robeson County boundary	+109	Bladen County (Unincorporated Areas).
	Approximately 1,200 feet downstream from Tar-heel Ferry Road.	+113	
Hammond Creek	At the confluence with Cape Fear River	+43	Bladen County (Unincorporated Areas).
	Approximately 400 feet upstream of Airport Road	+43	
Harrisons Creek	At the confluence with Cape Fear River	+59	Bladen County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Camp Bowers Trial Dam.	+71	
Horsepen Branch	Approximately 1,500 feet downstream from the confluence of Spring Branch.	+89	Bladen County (Unincorporated Areas).
	Approximately 0.5 mile upstream of State Route 410	+100	
Kitchens Branch	At the confluence with Carvers Creek	+42	Bladen County (Unincorporated Areas).
	Approximately 300 feet upstream of Cord Road	+69	
Lateral 7 Creek	At the confluence with Bryant Swamp	+105	Town of Bladenboro, Bladen County (Unincorporated Areas).
	Approximately 1,700 feet upstream of West Poplar Street	+114	
Lumber River	At the Bladen-Robeson-Columbus County boundary	+89	Bladen County (Unincorporated Areas).
	Approximately 1.8 miles upstream of the confluence of Bryant Swamp and Big Swamp.	+99	
Middle Swamp	At the confluence with Elkton Marsh	+78	Bladen County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 1.0 mile upstream of Porterville School Road ..	+96	
Mines Creek	At the confluence with Georgia Branch	+68	Bladen County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Dam	+120	
Plummers Run	At the confluence with Cape Fear River	+30	Bladen County (Unincorporated Areas).
	Approximately 240 feet upstream of Brighten Road	+64	
Plummers Run Tributary	At the confluence with Plummers Run	+43	Bladen County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Plummers Run.	+52	
Pub Mill Creek	At the confluence with Turnbull Creek	+48	Bladen County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Unnamed Road	+56	
Rattlesnake Creek	At the confluence of Spring Branch	+89	Bladen County (Unincorporated Areas).
	At the Bladen-Columbus County boundary	+96	
Reedy Meadow Swamp	At the confluence with Black Swamp	+118	Bladen County (Unincorporated Areas)
	Approximately 1.1 miles upstream of State Route 87	+140	
Saespan Branch	Approximately 600 feet downstream of the Bladen/Columbus County boundary.	+58	Bladen County (Unincorporated Areas)
	At the Bladen/Columbus County boundary	+59	
Slender Branch	At the confluence with Horsepen Branch	+93	Bladen County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Horsepen Branch.	+100	
South River	At the confluence with Black River	+26	Bladen County (Unincorporated Areas).
	At the Bladen/Cumberland County boundary	+71	
Spring Branch	At the confluence with Horsepen Branch	+89	Bladen County (Unincorporated Areas).
	Approximately 4,700 feet upstream of State Route 242	+104	
Steep Run	At the confluence with Cape Fear River	+28	Bladen County (Unincorporated Areas).
	Approximately 1.1 miles upstream of NC 87	+54	
Turnbull Creek	At the confluence with Cape Fear River	+48	Bladen County (Unincorporated Areas).
	Approximately 2,100 feet upstream of NC 242	+84	
Wateree Creek	At the confluence of Bryant Swamp	+101	Town of Bladenboro, Bladen County (Unincorporated Areas).
	Approximately 200 feet upstream of State Route 211 Bypass	+115	
Whites Creek	At the confluence with Hammond Creek	+43	Bladen County (Unincorporated Areas)
	Approximately 470 feet upstream of Airport Road	+43	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Bladen County

Maps are available for inspection at Bladen County Courthouse, 106 East Broad Street, Room 107, Elizabethtown, NC.

Town of Bladenboro

Maps are available for inspection at the Bladenboro Town Hall, 305 South Main Street, Bladenboro, NC.

Town of Clarkton

Maps available for inspection at the Clarkton Town Hall, 81 North Elm Street, Clarkton, NC.

Town of Elizabethtown

Maps are available for inspection at Elizabethtown Town Hall, 805 West Broad Street, Elizabethtown, NC.

Town of White Lake

Maps are available for inspection at White Lake Town Hall, 1879 White Lake Drive, White Lake, NC.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Cumberland County, North Carolina and Incorporated Areas (FEMA Docket Nos. D–7636 and D–7660)			
Beaver Creek	At the confluence with Little Rockfish Creek	+121	Cumberland County (Unincorporated Areas), City of Fayetteville, Town of Hope Mills.
	Approximately 0.9 mile upstream of All-American Expressway	+199	
Beaver Creek Tributary A	At the confluence with Beaver Creek	+135	Cumberland County (Unincorporated Areas).
	Approximately 1,700 feet upstream of the confluence with Beaver Creek.	+135	
Beaver Dam Creek	At the confluence with South River	+74	Cumberland County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Spencer Road	+106	
Big Branch	At the confluence with Beaver Creek	+191	Cumberland County (Unincorporated Areas), City of Fayetteville.
	Approximately 1.4 miles upstream of the confluence with Beaver Creek.	+219	
Big Creek	At the confluence with South River	+102	Cumberland County (Unincorporated Areas).
	Approximately 5.1 miles upstream of Maxwell Road+145.		
Black River	At the confluence with South River	+124	Cumberland County (Unincorporated Areas).
	At the Cumberland/Harnett County boundary Creek	+140	
Bones Creek	At the confluence with Little Rockfish Creek	+146	Cumberland County (Unincorporated Areas).
	Approximately 2.7 miles upstream of Morganton Road	+225	
Browns Swamp	At the confluence with South River	+111	Cumberland County (Unincorporated Areas).
	Approximately 650 feet upstream of South River School Road.	+128	
Tributary 1	At the confluence with Browns Swamp	+111	Cumberland County (Unincorporated Areas).
	Approximately 650 feet upstream of Kennel Road	+124	
Buck Creek	At the confluence with Big Creek	+108	Cumberland County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with Big Creek.	+113	
Buckhead Creek	At the confluence with Little Rockfish Creek	+112	Cumberland County (Unincorporated Areas), City of Fayetteville.
	Approximately 0.8 mile upstream of Raeford Road	+198	
Cape Fear River Tributary 2	At the confluence with Cape Fear River	+96	Cumberland County (Unincorporated Areas), Town of Wade.
	Approximately 0.4 mile upstream of Interstate 95	+131	
Cold Camp Creek	At the confluence with Galberry Swamp	+144	Cumberland County (Unincorporated Areas).
	Approximately 500 feet downstream of Interstate 95	+165	
Tributary 1	At the confluence with Cold Camp Creek	+145	Cumberland County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Canady Pond Road	+157	
Tributary 2	At the confluence with Cold Camp Creek	+153	Cumberland County (Unincorporated Areas).
	Approximately 0.8 mile upstream of John McMillan Road	+166	
Cypress Creek	At the confluence with Little River	+165	Cumberland County (Unincorporated Areas).
	Approximately 1.7 miles upstream of West Manchester Road	+204	
Galberry Swamp	At the Cumberland/Bladen County boundary	+134	Cumberland County (Unincorporated Areas).
	At the confluence with Cold Camp Creek and Buckhorn Swamp.	+144	
Gum Swamp	At the confluence with South River	+94	Cumberland County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Hollow Bridge Road	+103	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Hector Creek	At the confluence with Little River	+178	Cumberland County (Unincorporated Areas).
	At the Cumberland/Harnett County boundary	+194	
Jumping Run Creek	Approximately 1,250 feet upstream of NC 210 (Lillington Highway).	+136	Cumberland County (Unincorporated Areas).
	At the Cumberland/Harnett County boundary	+161	
Kirks Mill Creek	At the confluence with Willis Creek	+73	Cumberland County (Unincorporated Areas).
	Approximately 500 feet upstream of Point East Drive	+84	
Little River Tributary 1	At the confluence with Little River	+112	Cumberland County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Lower Little River.	138	
Tributary 2	At the confluence with Little River	+144	Cumberland County (Unincorporated Areas), Town of Spring Lake.
	Approximately 0.7 mile upstream of McCormick Road	+284	
Tributary 3	At the confluence with Little River Tributary 2	+154	Cumberland County (Unincorporated Areas).
	Approximately 300 feet upstream of Chapel Hill Road	+209	
Little Rockfish Creek	At the confluence with Rockfish Creek	+79	Cumberland County (Unincorporated Areas), Town of Hope Mills.
	Approximately 200 feet downstream of Raeford Road	+172	
Long Branch	At the confluence with Willis Creek	+95	Cumberland County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Willis Creek.	+116	
(Lower) Little River	Approximately 1.1 miles upstream of Mill Road	+103	Cumberland County (Unincorporated Areas), Town of Spring Lake.
	At the Cumberland/Hoke County boundary	+179	
Mingo Swamp	At the confluence with South River	+127	Cumberland County (Unincorporated Areas).
	At the Cumberland/Sampson/Harnett County boundary	+134	
Muddy Creek	At the confluence with Little River	+150	Cumberland County (Unincorporated Areas), Town of Spring Lake.
	At the Cumberland/Harnett County boundary	+175	
Peters Creek	At the Cumberland/Bladen County boundary	+71	Cumberland County (Unincorporated Areas).
	Approximately 1,400 feet upstream of C.S. Faircloth Road	+94	
Reese Creek	Approximately 1,100 feet upstream of the confluence with Locks Creek.	+84	Cumberland County (Unincorporated Areas).
	Approximately 320 feet upstream of Murphy Road	+137	
Rockfish Creek	Approximately 10 feet downstream of Calico Street	+81	Cumberland County (Unincorporated Areas), Town of Hope Mills.
	At the Cumberland/Hoke County boundary	+122	
Sandy Creek	At the confluence with South River	+97	Cumberland County (Unincorporated Areas), Town of Stedman.
	Approximately 375 feet upstream of Horne Farm Road	+120	
South River	At the Cumberland/Bladen/Sampson County boundary	+71	Cumberland County (Unincorporated Areas), Town of Falcon.
	Approximately 0.7 mile upstream of the confluence of Black River.	+127	
Tributary 1	At the confluence with South River	+117	Cumberland County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Smithfield Road	+175	
Tributary 2	At the confluence with South River Tributary 1	+122	Cumberland County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Sambo Jackson Road	+157	
Tributary 3	At the confluence with South River	+123	Cumberland County (Unincorporated Areas), Town of Falcon.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 0.7 mile upstream of the confluence with South River.	+139	
Tributary 4	Approximately 600 feet upstream of the confluence with South River.	+127	Cumberland County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Rhodes Pond Road	+138	
Stewarts Creek	At the confluence with Rockfish Creek	+122	Cumberland County (Unincorporated Areas).
	At the Cumberland/Hoke County boundary	+199	
Stewarts Creek (North)	Approximately 0.8 mile upstream of Morganton Road	+204	Cumberland County (Unincorporated Areas), City of Fayetteville.
	Approximately 1.4 miles upstream of Morgantown Road	+229	
Swans Creek	At the confluence with Willis Creek	+95	Cumberland County (Unincorporated Areas).
	Approximately 470 feet upstream of Yarborough Road	+109	
Tank Creek	At the confluence with Little River	+147	Cumberland County (Unincorporated Areas), Town of Spring Lake.
	Approximately 50 feet upstream of Railroad	+175	
Willis Creek	Approximately 500 feet downstream of Highway 87	+69	Cumberland County (Unincorporated Areas).
	At the confluence of Swans Creek and Long Branch	+95	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

City of Fayetteville

Maps are available for inspection at The City of Fayetteville Zoning Department, 433 Hay Street, Fayetteville, North Carolina.

Town of Falcon

Maps are available for inspection at the Falcon Town Hall, 7156 South West Street, Falcon, North Carolina.

Town of Hope Mills

Maps are available for inspection at the Hope Mills Town Hall, 5770 Rockfish Road, Hope Mills, North Carolina.

Town of Spring Lake

Maps are available for inspection at the Spring Lake Town Hall, 300 Ruth Street, Spring Lake, North Carolina.

Town of Stedman

Maps are available for inspection at the Stedman Town Hall, 5110 Front Street, Stedman, North Carolina.

Town of Wade

Maps are available for inspection at the Wade Town Hall, 7128 Main Street, Wade, North Carolina.

Unincorporated Areas of Cumberland County

Maps are available for inspection at the Cumberland County Mapping Department, 117 Dick Street, Fayetteville, North Carolina.

Hoke County, North Caronlina (Unincorporated Areas)
(FEMA Docket Nos. D–7540 and D–7642)

Beaver Creek	At the confluence with Black Branch	+164	Hoke County (Unincorporated Areas).
	Approximately 100 feet downstream of US 401	+239	
Beaver Creek Tributary	At the confluence with Beaver Creek	+182	Hoke County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Doc Brown Road	+239	
Tributary to Beaver Creek Tributary.	At the confluence with Beaver Creek Tributary	+235	Hoke County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Beaver Creek Tributary.	+246	
Big Branch	Approximately 375 feet upstream of the confluence with Rockfish Creek.	+129	Hoke County (Unincorporated Areas).
	At the Hoke/Robeson County boundary	+144	
Big Marsh Swamp	At the county boundary	+188	Hoke County (Unincorporated Areas).
	Approximately 100 feet downstream of Conoly Road	+230	
Big Marsh Swamp Tributary	At the confluence with Big Marsh Swamp	+198	Hoke County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Old Wire Road	+226	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Big Middle Swamp	At the confluence with Raft Swamp	+205	Hoke County (Unincorporated Areas).
	Approximately 1,750 feet downstream of L McLaughlin Road	+276	
Big Middle Swamp Tributary	At the confluence with Big Middle Swamp	+244	Hoke County (Unincorporated Areas).
	Approximately 680 feet downstream of Laurinburg Road	+254	
Black Branch	Approximately 1,700 feet upstream of the confluence with Puppy Creek.	+147	Hoke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Saddlebred Lane	+192	
Buffalo Creek	At the confluence with the Lumber River	+235	Hoke County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence of Buffalo Creek Tributary 2.	+383	
	At the confluence with Buffalo Creek	+274	Hoke County (Unincorporated Areas).
Tributary 1	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	+289	
	At the confluence with Buffalo Creek	+289	Hoke County (Unincorporated Areas).
Tributary 2	Approximately 1.3 miles upstream of the confluence with Buffalo Creek.	+360	
Deep Creek	At the confluence with Little River	+189	Hoke County (Unincorporated Areas).
	Approximately 2.9 miles upstream of the confluence of Mill Creek (into Deep Creek).	+266	
Flat Creek	At the confluence with Little River	+195	Hoke County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence of Flat Creek Tributary.	+266	
Flat Creek Tributary	At the confluence with Flat Creek	+239	Hoke County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Flat Creek.	+268	
Gully Branch	Approximately 400 feet upstream of the confluence with Rockfish Creek.	+128	Hoke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Overlake Drive	+197	
Gum Swamp	At the county boundary	+219	Hoke County (Unincorporated Areas).
	Approximately 120 feet upstream of Spring Hill Road	+230	
Horse Creek	At the confluence with Little River	+204	Hoke County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Little River.	+231	
James Creek	At the confluence with Little River	+210	Hoke County (Unincorporated Areas).
	At the Hoke/Moore County boundary	+300	
James Creek Tributary	At the confluence with James Creek	+211	Hoke County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with James Creek.	+241	
Jordan Swamp	At the county boundary	+218	Hoke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Old Maxton Road	+234	
Jumping Run creek	At the confluence with Little River	+182	Hoke County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Little River.	+227	
Little Creek	At the confluence with the Lumber River	+246	Hoke County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Pendergrass Road	+290	
Little Marsh Swamp	At the county boundary	+191	Hoke County (Unincorporated Areas).
	Approximately 30 feet downstream of Golf Course Road	+222	
Little Middle Swamp	At the confluence with Raft Swamp	+205	Hoke County (Unincorporated Areas).
	Approximately 1,300 feet downstream of Old Maxton Road	+230	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Little Raft Swamp	At the county boundary	+187	Hoke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Laurinburg Road	+258	
Little Raft Swamp Tributary	At the confluence with Little Raft Swamp	+197	Hoke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Wilson Road	+223	
LIttle River	At the Hoke/Cumberland County boundary	+178	Hoke County (Unincorporated Areas).
	At the Hoke/Moore County boundary	+209	
Little Rockfish Creek	At the Hoke/Cumberland boundary	+172	Hoke County (Unincorporated Areas).
	Approximately 500 feet downstream of Plank Road	+182	
Tributary 1	At the confluence with Little Rockfish Creek	+180	Hoke County (Unincorporated Areas).
	Approximately 0.2 mile upstream of Plank Road	+211	
Long Swamp	Approximately 500 feet upstream of Bullard Road	+207	Hoke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Wilson Road	+225	
Lumber River	At the downstream county boundary	+205	Hoke County (Unincorporated Areas).
	At the upstream county boundary	+268	
Lumber River Tributary	At the confluence with the Lumber River	+259	Hoke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Ashemont Road	+360	
McNeills Mill Creek	At the confluence with Big Marsh Swamp	+195	Hoke County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Pate Road	+226	
Mill Creek (into Deep Creek)	At the confluence with Deep Creek	+199	Hoke County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with Deep Creek.	+240	
Mill Creek (into Rockfish Creek)	Approximately 200 feet upstream of the confluence with Rockfish Creek.	+203	Hoke County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Rockfish Creek.	+249	
Mill Creek Tributary (into Rockfish Creek).	At the confluence with Mill Creek (into Rockfish Creek)	+248	Hoke County (Unincorporated Areas).
	Approximately 0.1 mile upstream of the confluence of Mill Creek (into Rockfish Creek).	+260	
Mill Creek Tributary (Hoke)	At the confluence with Mill Creek (Hoke)	+166	Hoke County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Mill Creek (Hoke).	+190	
Mill Creek (Hoke)	Approximately 900 feet upstream of the confluence of Rockfish Creek.	+131	Hoke County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Chason Road	+178	
Mountain Creek	At the confluence with the Lumber River	+247	Hoke County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Army Road	+329	
Mountain Creek Tributary	At the confluence with Mountain Creek	+280	Hoke County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Mountain Creek.	+300	
Nicholsons Creek	Approximately 1,750 feet upstream of the confluence with Rockfish Creek.	+189	Hoke County (Unincorporated Areas).
	Approximately 4.0 miles upstream of the confluence with Mott Lake.	+310	
Pedler Branch	Approximately 2,200 feet upstream of the confluence with Rockfish Creek.	+178	Hoke County (Unincorporated Areas), City of Raeford.
	At South Main Street	+226	
Pedler Branch Tributary	At the confluence with Pedler Branch	+215	Hoke County (Unincorporated Areas), City of Raeford.
	Approximately 350 feet upstream of the railroad	+228	
Quewhiffle Creek	At the confluence with the Lumber River	+255	Hoke County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Calloway Road	+347	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Tributary 1	At the confluence with Quewhiffle Creek	+289	Hoke County (Unincorporated Areas).
	Approximately 40 feet downstream of Strother Road	+328	
Tributary 2	At the confluence with Quewhiffle Creek	+289	Hoke County (Unincorporated Areas).
	At the county boundary	+313	
Tributary to Quewhiffle Creek Tributary 1.	At the confluence with Quewhiffle Creek Tributary 1	+297	Hoke County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Calloway Road	+353	
Raft Swamp	At the county boundary	+182	Hoke County (Unincorporated Areas).
	Approximately 100 feet downstream of Turnpike Road	+279	
Tributary 1	At the confluence with Raft Swamp	+205	Hoke County (Unincorporated Areas).
	Approximately 375 feet downstream of Redsprings Road	+219	
Tributary 2	At the confluence with Raft Swamp	+253	Hoke County (Unincorporated Areas).
	Approximately 0.4 mile upstream of the confluence with Raft Swamp.	+265	
Silver Run	At the confluence with James Creek	+283	Hoke County (Unincorporated Areas).
	Approximately 2,100 feet from the confluence with Jones Creek.	+293	
Stewarts Creek	Approximately 700 feet upstream of the confluence with Rockfish Creek.	+122	Hoke County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Lindsay Road	+241	
Stewarts Creek Tributary	At the confluence with Stewarts Creek	+199	Hoke County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Lindsay Road	+235	
Toneys Creek	At the confluence with Raft Swamp	+211	Hoke County (Unincorporated Areas), City of Raeford.
	Approximately 800 feet downstream of Turnpike Road	+265	
Tributary 1	At the confluence with Toneys Creek	+215	Hoke County (Unincorporated Areas), City of Raeford.
	Approximately 0.5 mile upstream of Laurinburg Road/U.S. 401.	+260	
Tuckahoe Creek	At the confluence with James Creek	+233	Hoke County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence of Tuckahoe Creek.	+289	
Tuckahoe Creek Tributary	At the confluence with Tuckahoe Creek	+277	Hoke County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Tuckahoe Creek Tributary.	+291	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Hoke County

Maps available for inspection at the Hoke County Permitting Office, 227 North Main Street, Raeford, North Carolina.

City of Raeford

Maps available for inspection at the Raeford City Hall, Planning Department, 315 North Main Street, Raeford, North Carolina.

Moore County, North Carolina and Unincorporated Areas
(FEMA Docket Nos. D–7540 and D–7626)

Aberdeen Creek	At the confluence with Drowning Creek	+273	Moore County (Unincorporated Areas), Town of Southern Pines, Village of Pinehurst.
	Approximately 250 feet downstream of Williams Drive	+470	
Tributary 1	At Plantation Drive	+385	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 0.7 mile upstream of Plantation Drive	+442	
Tributary 2	At the confluence with Aberdeen Creek	+386	Village of Pinehurst.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 0.6 mile upstream of the confluence	+426	
Tributary 3	At the confluence with Aberdeen Creek	+386	Village of Pinehurst, Town of Southern Pines.
	Approximately 100 feet upstream of National Drive	+463	Pinehurst, Town of Southern Pines.
Tributary 4	At the confluence with Aberdeen Creek	+418	Town of Southern Pines.
	Approximately 1,175 feet upstream of the confluence	+436	
Bear Creek	At the confluence with Deep River	+320	Moore County (Unincorporated Areas), Town of Robbins.
	Approximately 100 feet downstream of Adams Road	+461	
Beaver Creek (into Crane Creek)	At the confluence with Crane Creek	+234	Moore County (Unincorporated Areas).
	At the Moore/Lee County boundary	+307	
Big Governors Creek	At the confluence with Deep Creek	+257	Moore County (Unincorporated Areas).
	At the confluence with Big Governors Creek Tributary	+304	
Big Governors Creek Tributary	At the confluence with Big Governors Creek	+304	Moore County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Torchwood Road	+326	
Big Juniper Creek	At the confluence with McLendons Creek	+320	Moore County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Longleaf Lake Dam	+555	
Board Branch	At the confluence with Joe's Fork	+368	Moore County (Unincorporated Areas), Village of Pinehurst.
	Approximately 1,300 feet upstream of Yadkin Road (State Route 211).	+456	
Buffalo Creek (Hoke)	At the confluence with Little River	+186	Moore County (Unincorporated Areas).
	At the Moore/Harnett County boundary	+218	
Buffalo Creek (Moore)	At the confluence with Deep River	+288	Moore County (Unincorporated Areas).
	Approximately 3.8 miles upstream of State Highway 24	+502	
Buffalo Creek Tributary 1	At the confluence with Buffalo Creek (Hoke)	+194	Moore County (Unincorporated Areas).
	Approximately 1,400 feet upstream of Marks Road	+337	
Cabin Creek	Approximately 200 feet upstream of the confluence with Bear Creek.	+361	Moore County (Unincorporated Areas), Town of Robbins.
	At the Moore/Montgomery County boundary	+487	
Carrolls Branch	At the confluence with James Creek	+252	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 4.3 miles upstream of Youngs Road	+365	
Cotton Creek	At the confluence with Cabin Creek	+449	Moore County (Unincorporated Areas).
	At the Moore/Montgomery County boundary	+482	
Crane Creek	At the confluence with Little River	+194	Moore County (Unincorporated Areas), Town of Carthage, Town of Vass.
	Approximately 500 feet upstream of State Highway 24	+369	Moore County (Unincorporated Areas), Town of Carthage, Town of Vass.
Crawley Creek	At the confluence with Big Governors Creek	+257	Moore County (Unincorporated Areas).
	Approximately 800 feet upstream of Old River Road	+318	
Tributary 1	At the confluence with Crawley Creek	+289	Moore County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Crawley Creek.	+298	
Tributary 2	At the confluence with Crawley Creek	+289	Moore County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Crawley Creek.	+307	
Cypress Creek	Just upstream of Loblolly Drive	+228	Moore County (Unincorporated Areas).
	At the Moore/Harnett County boundary	+228	
Deep Creek	At the confluence with Horse Creek	+302	Moore County (Unincorporated Areas), Village of Foxfire.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 1.0 mile upstream of the confluence with Sandy Run.	+367	
Deep River	At the Moore/Chatham County boundary	+250	Moore County (Unincorporated Areas).
	At the Moore/Randolph County boundary	+352	
Tributary 4	At the confluence with Deep River	+265	Moore County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Deep River.	+267	
Tributary 5	At the confluence with Deep River	+265	Moore County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Rascob Road	+265	
Drowning Creek	At Moore/Hoke County boundary	+268	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 400 feet downstream of Purdue Road	+672	
Tributary 2	At the confluence with Drowning Creek	+458	Moore County (Unincorporated Areas)
	Approximately 1.4 miles upstream of Martin Road	+545	
Dry Creek	At the confluence with Cabin Creek	+369	Moore County (Unincorporated Areas).
	Approximately 5.1 miles upstream of State Highway 24	+533	
Dunham Creek	At the confluence with Crane Creek	+327	Moore County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Farm Life School Road	+354	
Glade Branch	At the confluence with McLendons Creek	+263	Moore County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Kelly Plantation Road	+274	
Grassy Creek	At the confluence with Deep River	+335	Moore County (Unincorporated Areas).
	Approximately 400 feet upstream of L. Moore Road	+544	
Hector Creek	Just upstream of the confluence with Little River	+178	Moore County (Unincorporated Areas).
	At the Moore/Harnett/Cumberland County boundaries	+194	
Herds Creek	At the confluence with Crane Creek	+278	Moore County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Red Hill Road	+357	
Horse Creek	At the confluence with Drowning Creek	+284	Moore County (Unincorporated Areas), Village of Pinehurst.
	Approximately 0.4 mile upstream of Linden Road	+374	
Horse Creek (Moore)	At the confluence with Dry Creek	+393	Moore County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Alex Road	+474	
Tributary 1	At the confluence with Horse Creek	+319	Moore County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Horse Creek.	+431	
Tributary 2	At the confluence with Horse Creek	+342	Moore County (Unincorporated Areas), Town of Aberdeen, Village of Pinehurst.
	Approximately 1.2 miles upstream of the confluence	+401	
Tributary 4	At the confluence with Horse Creek	+366	Moore County (Unincorporated Areas), Village of Pinehurst.
	Approximately 1,300 feet upstream of Linden Road	+441	
Jackson Creek	At the confluence with Drowning Creek	+369	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 1,975 feet upstream of Currie Mill Road	+437	
Tributary 1	At the confluence with Jackson Creek	+372	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 0.6 mile upstream of the confluence of Tributary to Jackson Creek Tributary 1.	+394	
Tributary 3	At the confluence with Jackson Creek	+415	Moore County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Jackson Creek.	+443	
James Creek	At the confluence with Little River	+209	Moore County (Unincorporated Areas), Town of Southern Pines.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 0.4 mile upstream of Den Road	+526	
Joes Fork	At the confluence of Nicks Creek	+343	Moore County (Unincorporated Areas), Town of Taylortown, Village of Pinehurst.
	Just downstream of Stoneykirk Drive	+430	
Juniper Branch	At the confluence with Nicks Creek	+324	Town of Carthage, Town of Southern Pines.
	Approximately 1.2 miles upstream of Meyer Farm Road	+437	
Juniper Branch Tributary	At the confluence with Juniper Branch	+344	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 1.0 mile upstream of the confluence with Juniper Branch.	+401	
Lake Auman	Entire shoreline of Lake Auman within community	+525	Moore County (Unincorporated Areas).
Lick Creek	At the confluence with Scotchman Creek	+286	Moore County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Putnam Church Road	+356	
Line Creek	At the confluence with Deep River	+250	Moore County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Alston House Road	+250	
Little Crane Creek	At the confluence with Little Crane Creek	+259	Moore County (Unincorporated Areas), Town of Cameron.
	At the Moore/Lee County boundary	+317	
Little Crane Creek Tributary	At the confluence with Little Crane Creek	+304	Moore County (Unincorporated Areas), Town of Cameron.
	At the Moore/Lee County boundary	+317	
Little Creek (into Crane Creek)	Approximately 700 feet upstream of the confluence with Crane Creek.	+206	Moore County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Summer Creek Trail	+275	
Little Creek (Moore)	At the confluence with McLendons Creek	+280	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Old Glendon Road	+297	
Little Creek Tributary	At the confluence with Little Creek	+233	Moore County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Little Creek on to Crane Creek.	+316	
Little Governors Creek	At the confluence with Big Governors Creek	+257	Moore County (Unincorporated Areas).
	Approximately 8.3 miles upstream of the confluence with Big Governors Creek.	+360	
Little River	At the confluence with Hector Creek	+178	Moore County (Unincorporated Areas), Town of Vass.
	Approximately 1.1 miles upstream of Beulah Hill Church Road.	+413	
McCallum Branch	At the confluence with Aberdeen Creek	+340	Moore County (Unincorporated Areas), Town of Aberdeen, Village of Pinehurst.
	Approximately 0.4 mile upstream of confluence	+340	
McDeeds Creek	At the confluence with Mill Creek (into Little River)	+276	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 100 feet upstream of West New Hampshire Avenue.	+394	
McIntosh Creek	At the confluence with Big Governors Creek	+265	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Old River Road	+376	
McIntosh Creek Tributary	At the confluence with McIntosh Creek	+269	Moore County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with McIntosh Creek.	+281	
McLendons Creek	At the confluence with Deep River	+263	Moore County (Unincorporated Areas).
	Approximately 1.6 miles upstream of the confluence with McLendons Creek Tributary 3.	+603	
Tributary 1	At the confluence with McLendons Creek	+274	Moore County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 1.5 miles upstream of Old Glendon Road	+292	
Tributary 2	At the confluence with McLendons Creek	+399	Moore County (Unincorporated Areas).
	Approximately 1.9 miles upstream of the confluence with McLendons Creek.	+491	
Tributary 3	At the confluence with McLendons Creek	+453	Moore County (Unincorporated Areas).
	Approximately 1.4 miles upstream of the confluence with McLendons Creek.	+597	
Meadow Creek	At the confluence with Buffalo Creek	+400	Moore County (Unincorporated Areas).
	Approximately 1,400 feet upstream of State Highway 24/27	+462	
Mill Creek (into Cabin Creek)	At the confluence with Cabin Creek	+411	Moore County (Unincorporated Areas).
	Approximately 700 feet upstream of the confluence with Mill Creek Tributary.	+547	
Mill Creek (into James Creek)	At the confluence with James Creek	+314	Moore County (Unincorporated Areas), Town of Southern Pines.
	Approximately 1.5 miles upstream of the confluence with James Creek.	+364	
Mill Creek (into Little River)	At the confluence with Little River	+252	Moore County (Unincorporated Areas), Towns of Vass and Southern Pines, Village of Whispering Pines.
	Approximately 0.4 mile upstream of State Highway 22	+360	
New Lake	At the confluence with McLendons Creek	+422	Moore County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Holly Grove School Road.	+537	
New Lake Tributary	At the confluence with New Lake	+434	Moore County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with New Lake.	+565	
Nicks Creek	Approximately 1,250 feet upstream of the confluence with Little River.	+303	Moore County (Unincorporated Areas), Town of Carthage, Town of Southern Pines, Village of Pinehurst, Village of Whispering Pines.
	Approximately 2.3 miles upstream of Beulah Hill Church Road.	+420	
Seven Lakes South	At the confluence with Big Juniper Creek	+451	Moore County (Unincorporated Areas).
	Approximately 1,600 feet upstream of Cardinal Lane	+525	
Simlin Creek	Just upstream of the confluence with Bear Creek	+360	Moore County (Unincorporated Areas), Town of Robbins.
	Approximately 1.2 miles upstream of Trail Ridge Road	+375	
Sings Creek	At the confluence with Wet Creek	+440	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Bensalem Church Road	+529	
Suck Creek	At the confluence with McLendons Creek	+333	Moore County (Unincorporated Areas).
	Approximately 100 feet upstream of Mount Carmel Road	+360	
Toms Creek	At the confluence with Richland Creek	+263	Moore County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Richland Creek.	+289	
Tributary to Drowning Creek Tributary 2.	At the confluence with Drowning Creek Tributary 2	+470	Moore County (Unincorporated Areas).
	Approximately 1,800 feet upstream of Eagle Branch Road	+516	
Tributary to Jackson Creek Tributary 1.	At the confluence with Jackson Creek Tributary 1	+380	Moore County (Unincorporated Areas), Village of Foxfire.
	Approximately 1,750 feet downstream of Jackson Springs Road.	+402	
Tributary to McLendons Creek Tributary 1.	At the confluence with McLendons Creek Tributary 1	+276	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Brady Road	+290	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Tributary 2	At the confluence with McLendons Creek Tributary 2	+415	Moore County (Unincorporated Areas).
	Approximately 0.9 mile upstream of the confluence with McLendons Creek Tributary 2.	+455	
Tributary to Quewhiffle Creek Tributary 2.	At the confluence with Quewhiffle Creek Tributary 2	+316	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of confluence of Quewhiffle Creek Tributary 2.	+343	
Turkey Creek	At the confluence with Little River	+184	Moore County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Little River.	+221	
Tysons Creek	At the confluence with Deep River	+273	Moore County (Unincorporated Areas).
	At the Moore/Chatham County boundary	+320	
Wads Creek	Approximately 0.4 mile upstream of Little River Farm Boulevard.	+325	Moore County (Unincorporated Areas), Town of Carthage.
	Approximately 0.6 mile upstream of Murdocksville Road	+404	
Wet Creek	At the confluence with Cabin Creek	+373	Moore County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Skill Road	+559	
Wildcat Branch	At the confluence with Beaver Creek	+297	Moore County (Unincorporated Areas).
	At the Moore/Chatham County boundary	+297	
Williams Creek	At the confluence with Bear Creek	+419	Moore County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Willie Road	+474	
Wolf Creek	At the confluence with Bear Creek	+386	Moore County (Unincorporated Areas).
	At the Moore/Montgomery County boundary	+518	
Lick Creek (into Deep River)	At the confluence with Deep River	+263	Moore County (Unincorporated Areas).
	Approximately 300 feet upstream of Glendon-Carthage Road	+266	
Mill Creek Tributary	At the confluence with Mill Creek (into Cabin Creek)	+547	Moore County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Mill Creek (into Cabin Creek).	+576	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

Town of Aberdeen

Maps available for inspection at the Aberdeen Planning Department, 115 North Poplar Street, Aberdeen, North Carolina.

Town of Cameron

Maps available for inspection at the Cameron Town Clerk's Office, 247 Carter Street, Cameron, North Carolina.

Town of Carthage

Maps available for inspection at the Carthage Town Clerk's Office, 4396 Highway 15–501, Carthage, North Carolina.

Village of Foxfire

Maps available for inspection at the Foxfire Village Zoning Department, 1 Town Hall Drive, Foxfire Village, North Carolina.

Unincorporated Areas of Moore County

Maps available for inspection at the Moore County Planning Office, 101A Monroe Street, Courthouse Square, Carthage, North Carolina.

Town of Pinebluff

Maps available for inspection at the Pinebluff Zoning Department, 325 East Baltimore Avenue, Pinebluff, North Carolina.

Village of Pinehurst

Maps available for inspection at the Village of Pinehurst Planning Office, 395 Magnolia Road, Pinehurst, North Carolina.

Town of Robbins

Maps available for inspection at the Robbins Town Hall, 101 North Middleton Street, Robbins, North Carolina.

Town of Southern Pines

Maps available for inspection at the Southern Pines Planning Department, 180 Southwest Broad Street, Southern Pines, North Carolina.

Town of Taylortown

Maps available for inspection at the Tarylortown Town Hall, 8350 Main Street, Taylortown, North Carolina.

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Town of Vass			
Maps available for inspection at the Vass Town Clerk's Office, 140 South Alma Street, Vass, North Carolina 28394.			
Village of Whispering Pines			
Maps available for inspection at the Whispering Pines Village Office, 10 Pine Ridge Drive, Whispering Pines, North Carolina.			
NORTH CAROLINA Sampson County (FEMA Docket Nos. D–7660 and D–7636)			
Bearskin Swamp	At the confluence with Little Coharie Creek	+87	Sampson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Bearskin Road	+153	
Beaverdam Creek	At the confluence with Clear Run	+57	Sampson County (Unincorporated Areas).
	Approximately 2.4 miles upstream of the confluence with Clear Run.	+97	
Beaverdam Run	At the confluence with Great Coharie Creek	+99	Sampson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of High House Road	+168	
Beaverdam Swamp	At the confluence with Mongo Swamp	+127	Sampson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of U.S. Highway 421	+191	
Beaverdam Swamp 1	At the confluence with Six Runs Creek	+93	Sampson County (Unincorporated Areas).
	Approximately 350 feet upstream of Isaac Weeks Road	+137	
Beaverdam Swamp 2	At the confluence with Great Coharie Creek	+106	Sampson County (Unincorporated Areas).
	Approximately 260 feet downstream of Keener Road	+133	
Tributary 1	At the confluence with Beaverdam Swamp 2	+119	Sampson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Wiggins Road	+139	
Beaverdam Swamp 3	At the confluence with Great Coharie Creek	+134	Sampson County (Unincorporated Areas), Town of Newton Grove.
	Approximately 1,000 feet upstream of the confluence of Beaverdam Swamp 3, Tributary 2.	+155	
Tributary 2	At the confluence with Beaverdam Swamp 3	+154	Town of Newton Grove.
	Approximately 800 feet upstream of Old Goldsboro Road	+162	
Beaverdam Run Tributary 1	At the confluence with Beaverdam Run	+121	Sampson County (Unincorporated Areas).
	Approximately 160 feet downstream of High House Road	+135	
Big Branch	At the confluence with Black River	+42	Sampson County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Harrells Highway (NC Highway 411).	+84	
Big Juniper Run	At the confluence with Mingo Swamp	+151	Sampson County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Lee's Chapel Church Road.	+192	
Big Swamp	At the confluence with South River	+77	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Minnie-Hall Road	+128	
Bills Swamp	At the confluence with Little Coharie Creek	+58	Sampson County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Norris Road	+89	
Black River	At the Bladen/Pender/Sampson County boundary	+23	Sampson County (Unincorporated Areas).
	Approximately 3.6 miles upstream of the confluence of Big Branch.	+45	
Tributary 1	At the confluence with Black River	+33	Sampson County (Unincorporated Areas).
	Approximately 1,300 feet upstream of G. Shaw Road	+68	
Buckhorn Creek	At the confluence with Crane Creek	+69	Sampson County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Boney Mill Road	+103	

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
Bulltail Creek	At the Sampson/Duplin County boundary	+58	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Bull Tail Road	+63	
Caesar Swamp	At the confluence with Little Coharie Creek	+132	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Straw Pond School Road.	+180	
Canty Mill Branch	At the confluence with Black River	+38	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Melvin Road	+57	
Cat Creek	At the confluence with Black River	+35	Sampson County (Unincorporated Areas).
	Approximately 1,750 feet upstream of Private Road	+79	
Cat Tail Branch	At the confluence with Williams Old Mill Branch	+122	City of Clinton.
	Approximately 1,380 feet upstream of East Johnson Street	+138	
Clear Run	Just upstream of Lundy Road	+46	Sampson County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence of Beaverdam Creek.	+70	
Clifton Branch (formerly Kings Branch).	At the confluence with Six Runs Creek	+121	Sampson County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Six Runs Creek.	+137	
Cobb Branch	At the confluence with Canty Mill Branch	+40	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of confluence with Canty Mill Branch.	+48	
Craddock Swamp	At the confluence with Ward Swamp	+141	Sampson County (Unincorporated Areas).
	Approximately 275 feet downstream of William R. King Road	+167	
Crane Creek	At the confluence with Six Runs Creek	+57	Sampson County (Unincorporated Areas).
	Approximately 1.9 miles upstream of West Mount Gilead Church Road.	+106	
Cypress Lake	At the confluence with Black River	+27	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Ivanhoe Road	+65	
Devane Branch	At the confluence with Black River	+38	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Tomahawk Highway (NC Highway 41).	+79	
Doctors Creek	At the Sampson/Duplin County boundary	+87	Sampson County (Unincorporated Areas).
	Approximately 250 feet upstream of the Sampson/Duplin County boundary.	+88	
Dollar Branch	Approximately 800 feet upstream of the confluence with Williams Old Mill Branch.	+105	Sampson County (Unincorporated Areas), City of Clinton.
	Approximately 1,060 feet upstream of W. Morisey Boulevard	+140	
Encoh Mill Creek	At the confluence with South River	+31	Sampson County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Dam	+67	
Gilmore Swamp	At the confluence with Six Runs Creek	+100	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of King Road	+142	
Gilmore Swamp Tributary	At the confluence with Gilmore Swamp	+115	Sampson County (Unincorporated Areas).
	Approximately 1.6 miles upstream of King Road	+136	
Goshen Swamp	At the Sampson/Duplin County boundary	+117	Sampson County (Unincorporated Areas).
	Approximately 228 feet upstream of Preacher Henrys Road	+167	
Great Coharie Creek	Approximately 0.8 mile upstream of the confluence with Black River and Six Runs Creek.	+52	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Oak Grove Church Road	+182	
Tributary 1	At the confluence with Great Coharie Creek	+67	Sampson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 1.2 miles upstream of the confluence with Great Coharie Creek.	+103	
Tributary 2	At the confluence with Great Coharie Creek	+67	Sampson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Great Coharie Creek.	+101	
Tributary 3	At the confluence with Great Coharie Creek	+113	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Keener Road	+148	
Hoe Swamp	At the confluence with Six Runs Creek	+118	Sampson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Hunter Road	+157	
Hornet Swamp	At the confluence with Little Coharie Creek	+133	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of North Salemburg Highway.	+170	
Johnson Mill Branch	At the confluence with Little Coharie Creek	+68	Sampson County (Unincorporated Areas).
	Approximately 1,240 feet upstream of Greens Bridge Road	+109	
Jones Swamp	At the confluence with South River	+110	Sampson County (Unincorporated Areas).
	Approximately 810 feet upstream of Welcome School Road	+138	
Keith Branch	At the confluence with Black River	+34	Sampson County (Unincorporated Areas)
	Approximately 1,430 feet upstream of Firetower Road	+48	
Kill Swamp	At the confluence with Great Coharie Creek	+132	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of Emmet Thornoton Road	+176	
Tributary 1	At the confluence with Kill Swamp	+165	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Kill Swamp.	+169	
Little Beaverdam Swamp	At the confluence with South River	+120	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Phillips Road	+155	
Tributary 1	At the confluence with Little Beaverdam Swamp	+123	Sampson County (Unincorporated Areas).
	Approximately 1.3 mile upstream of the confluence with Little Beaverdam Swamp Tributary 2.	+138	
Tributary 2	At the confluence with Little Beaverdam Swamp Tributary 1	+123	Sampson County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Charles Newland Road	+145	
Little Coharie Creek	At the confluence with Great Coharie Creek	+58	Sampson County (Unincorporated Areas).
	Approximately 1.1 miles upstream of Newton Grove Highway (U.S. Highway 13).	+192	
Little Coharie Creek Tributary	At the confluence with Little Coharie Creek	+87	Sampson County (Unincorporated Areas).
	Approximately 0.3 mile upstream of Andrews Chapel Road	+117	
Little Juniper Run	At the confluence with Big Juniper Run	+172	Sampson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Draughon Road	+214	
Lockamy Mill	At the confluence with Little Coharie Creek	+73	Sampson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of State Route 411	+103	
Marsh Swamp	At the confluence with Great Coharie Creek	+112	Sampson County (Unincorporated Areas).
	Approximately 1,020 feet upstream of Odom Road	+143	
McPhail Branch	At the confluence with Merkle Swamp	+131	Sampson County (Unincorporated Areas).
	Approximately 1.1 miles upstream of confluence with Merkle Swamp.	+160	
Meetinghouse Branch	At the confluence with Great Coharie Creek	+103	Sampson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Basstown Road	+128	
Merkle Swamp	At the confluence with Great Coharie Creek	+116	Sampson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 0.7 mile upstream of Joel Jones Lane	+155	
Mill Creek	At the Sampson/Duplin County boundary	+51	Sampson County (Unincorporated Areas).
	Approximately 800 feet upstream of Matthews Road	+66	
Mill Creek 2	At the confluence with Great Coharie Creek	+63	Sampson County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Garland Highway (Highway 701).	+110	
Tributary 2	At the confluence with Mill Creek	+61	Sampson County (Unincorporated Areas).
	At the Sampson/Pender County boundary	+75	
Mill Run	At the confluence with Six Runs Creek	+86	Sampson County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Rowan Road	+111	
Mill Swamp	At the confluence with Six Runs Creek	+102	Sampson County (Unincorporated Areas).
	Approximately 2.5 miles upstream of Lake Artesia Road	+123	
Mill Swamp Tributary	At the confluence with Mill Swamp	+122	Sampson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of confluence with Mill Swamp.	+125	
Mingo Swamp	At the confluence with South River	+127	Sampson County (Unincorporated Areas).
	At the Sampson/Harnett/Johnston County boundary confluence with Mill Swamp.	+173	
Old Mill Swamp	At the confluence with Great Coharie Creek	+113	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Church Road	+152	
Peters Creek	At the confluence with Buckhorn Branch	+70	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of confluence with Buckhorn Branch.	+100	
Pharisee Creek	At the Sampson/Duplin County boundary	+58	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Wilmington Highway (U.S. Highway 421).	+67	
Quewiffle Swamp	At the confluence with Six Runs Creek	+62	Sampson County (Unincorporated Areas).
	Approximately 2.2 miles upstream of Trinity Church Road	+84	
Railer Branch	At the confluence of Goshen Swamp	+135	Sampson County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Hollingsworth Road	+166	
Rice Swamp	At the confluence with Little Coharie Creek	+99	Sampson County (Unincorporated Areas), Town of Salemburg.
	Approximately 0.4 mile upstream of Zoar Church Road	+156	
Robinson Mill Branch	At the confluence with Six Runs Creek	+56	Sampson County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Private Road	+114	
Rocky Marsh Creek	At the confluence with Great Coharie Creek	+67	Sampson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Peterson Road	+91	
Rocky Marsh Creek Tributary	At the confluence with Rocky Marsh Creek	+78	Sampson County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Rocky Marsh Creek.	+138	
Rowan Branch	At the confluence with Six Runs Creek	+82	Sampson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Rowan Road	+140	
Sevenmile Swamp	At the confluence with Great Coharie Creek	+128	Sampson County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Easy Street	+193	
Shade Branch	At the confluence with Quewiffle Swamp	+80	Sampson County (Unincorporated Areas).
	Approximately 1,900 feet upstream of Rogers Mill Road	+95	
Six Runs Creek	At the confluence with Black River	+52	Sampson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 0.9 mile upstream of N. McCullen Road	+137	
South River	At the confluence with Black River	+26	Sampson County (Unincorporated Areas), Town of Autryville.
	At the confluence with Mingo Swamp	+127	
South River Tributary 4	At the confluence with South River	+127	Sampson County (Unincorporated Areas).
	Approximately 650 feet upstream of the confluence with South River.	+127	
Spearmans Mill Creek	At the confluence with Six Runs Creek	+53	Sampson County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Hayes Chapel Road	+88	
Starlins Swamp	At the confluence with Beaverdam Swamp	+138	Sampson County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Staley Hall Road	+177	
Stewarts Creek (near Carroll)	At the confluence with Six Runs Creek	+67	Sampson County (Unincorporated Areas).
	At the Sampson/Duplin County boundary	+83	
Stony Run	At the confluence with Mingo Swamp	+158	Sampson County (Unincorporated Areas).
	Approximately 600 feet upstream of the confluence with Mingo Swamp.	+160	
Tarkill Branch	At the confluence with Six Runs Creek	+52	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Edmond Matthis Road	+97	
Tenmile Swamp	At the confluence with Six Runs Creek	+97	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of McGowan Road	+135	
Tenmile Swamp Tributary	At the confluence with Tenmile Swamp	+107	Sampson County (Unincorporated Areas).
	Approximately 320 feet upstream of Thompson Avenue	+127	
Turkey Creek	At the confluence with Six Runs Creek	+90	Sampson County (Unincorporated Areas), Town of Turkey.
	At the Sampson/Duplin County boundary	+117	
Twomile Swamp	At the confluence with Caesar Swamp	+147	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Bynum Road	+162	
Ward Swamp	At the confluence with Great Coharie Creek	+124	Sampson County (Unincorporated Areas).
	Approximately 1.3 miles upstream of the confluence with Craddock Swamp.	+159	
Tributary 1:	At the confluence with Ward Swamp	+129	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Hobbton Highway (U.S. Highway 701).	+156	
Tributary 2	At the confluence with Ward Swamp Tributary 1	+133	Sampson County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Share Cake Road	+158	
Tributary 3	At the confluence with Ward Swamp	+133	Sampson County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Hobbton Highway (U.S. Highway 701).	+159	
Tributary 4	At the confluence with Ward Swamp Tributary 3	+138	Sampson County (Unincorporated Areas).
	Approximately 0.8 mile upstream of the confluence with Ward Swamp Tributary 3.	+152	
Williams Old Mill Branch	Approximately 600 feet upstream of U.S. 701	+121	Sampson County (Unincorporated Areas), City of Clinton.
	Approximately 400 feet upstream of Northeast Boulevard	+124	
Williams Old Mill Branch Tributary.	At the confluence with Williams Old Mill Branch	+121	Sampson County (Unincorporated Areas), City of Clinton.
	Approximately 0.5 mile upstream of North Boulevard	+149	
Williamson Swamp	At the confluence with Little Beaverdam Swamp	+129	Sampson County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	#Depth in feet above ground. *Elevation in feet (NGVD). +Elevation in feet (NAVD)	Communities affected
	Approximately 340 feet upstream of Stanley Hall Road	+179	
Wolf Pit Branch	At the confluence with Buckhorn Creek	+85	Sampson County (Unincorporated Areas).
	Approximately 1,640 feet upstream of Ozzie Road	+120	
Youngs Swamp	At the Sampson/Duplin County boundary	+117	Sampson County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Suttontown Road	+137	

* National Geodetic Vertical Datum 1929.
+ North American Vertical Datum 1988.
# Depth in feet above ground.

ADDRESSES

City of Clinton

Maps available for inspection at Clinton City Hall, 227 Lisbon Street, Clinton, North Carolina.

Town of Autryville

Maps available for inspection at Autryville Town Hall, 215 South Gray Street, Autryville, North Carolina.

Town of Newton Grove

Maps available for inspection at Newton Grove Hall, 304 West Weeksdale Street, Newton Grove, North Carolina.

Town of Salemburg

Maps available for inspection at Salemburg Town Hall, 100 Methodist Drive, Salemburg, North Carolina.

Unincorporated Areas of Sampson County

Maps available for inspection at the Sampsons County Inspections Department, 383 County Complex Road, Clinton, North Carolina.

Town of Turkey

Maps available for inspection at Turkey Town Hall, 51 Market Street, Turkey, North Carolina.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
Rutherford County, Tennessee and Incorporated Areas (FEMA Docket No. B–7458)			
Andrews Creek	Confluence with East Fork Stones River	+608	Rutherford County (Unincorporated Areas).
	Approximately 50 feet upstream of Hollingsworth Road	+657	
Armstrong Branch	Confluence with Puckett Creek	+630	Rutherford County (Unincorporated Areas), City of Murfreesboro.
	Approximately 2,070 feet upstream of Yeargan Road	+648	
Bear Branch	Confluence with East Fork Stones River	+538	Rutherford County (Unincorporated Areas), City of Murfreesboro.
	Approximately 1,720 feet downstream of Compton Road	+538	
Big Springs Creek	Confluence with Hurricane Creek	+723	Rutherford County (Unincorporated Areas).
	Approximately 1,010 upstream of Jimmy C Newman Road	+775	
Bradley Creek	Confluence with East Fork Stones River	+558	Rutherford County (Unincorporated Areas).
	Approximately 5,280 feet upstream of King Road	+685	
Bushman Creek	Confluence with East Fork Stones River	+545	Rutherford County (Unincorporated Areas).
	Approximately 1,400 feet upstream of New Lascassas Road	+596	
Cheatham Branch	Confluence with Harpeth River	+724	Rutherford County (Unincorporated Areas), City of Eagleville.
	Approximately 3,420 feet upstream of South Main Street	+788	
Christmas Creek	Approximately 1,400 feet upstream of the confluence with West Fork Stones River.	+639	Rutherford County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
	Approximately 930 feet upstream of Christiana Fosterville Road.	+698	
Concord Branch	Confluence with Harpeth River	+739	Rutherford County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Ditch Lane	+749	
Cripple Creek	Confluence with East Fork Stones River	+579	Rutherford County (Unincorporated Areas).
	Approximately 1,890 feet upstream of Big Springs Road	+874	
Dry Branch	Confluence with Cripple Creek	+592	Rutherford County (Unincorporated Areas).
	Approximately 1,350 feet upstream of John Bragg Highway	+652	
Dry Creek	Confluence with Hurricane Creek	+712	Rutherford County (Unincorporated Areas).
	Approximately 760 feet upstream of Cobb Road	+746	
Dry Fork	Confluence with Bradley Creek	+603	Rutherford County (Unincorporated Areas).
	Approximately 2.5 miles upstream of Givens Road	+695	
Dry Fork Creek	Confluence with West Fork Stones River	+685	Rutherford County (Unincorporated Areas).
	Approximately 4,640 feet upstream of Brothers Road	+854	
East Fork Stones River	Approximately 2,900 feet downstream of State Route 840	+506	Rutherford County (Unincorporated Areas), City of Murfreesboro.
	Approximately 4,220 feet upstream of Goochie Ford Road	+620	
Fall Creek	Approximately 1.4 miles downstream of Powells Chapel Road	+508	Rutherford County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Fall Parkway	+556	
Finch Branch	Approximately 990 feet downstream of Jefferson Pike	+580	City of Lavergne.
	Approximately 1,428 feet upstream of Greenwood Drive	+619	
Harpeth River	Approximately 1,680 feet downstream of College Road	+706	Rutherford County (Unincorporated Areas), City of Eagleville.
	Approximately 680 feet upstream of North Lane	+737	
Henry Creek	Confluence with Short Creek	+681	Rutherford County (Unincorporated Areas).
	Approximately 2,980 feet upstream of Sims Road	+750	
Hurricane Creek	Confluence with Middle Forks Stones River	+655	Rutherford County (Unincorporated Areas).
	Approximately 1.3 miles upstream of Cobb Road	+723	
Kelly Creek	Confluence with Harpeth River	+726	Rutherford County (Unincorporated Areas).
	Approximately 2,150 upstream of Floyd Road	+797	
Long Creek	Approximately 4,910 feet upstream of confluence with Middle Fork Stones River.	+636	Rutherford County (Unincorporated Areas).
	Approximately 1.9 miles upstream of Jacobs Bend Road	+672	
Lytle Creek	Approximately 1.3 miles upstream of Diton-Mankin Road	+657	Rutherford County (Unincorporated Areas).
	Approximately 4,000 feet upstream of Cedar Grove Road	+722	
McElroy Branch	Confluence with Cripple Creek	+629	Rutherford County (Unincorporated Areas).
	Approximately 1,020 upstream of Murray Kittrell Road	+670	
McKnight Branch	Confluence with East Fork Stones River	+606	Rutherford County (Unincorporated Areas).
	Approximately 2.6 miles upstream of E. Trimble Road	+658	
Middle Fork Stones River	Approximately 1.5 miles downstream of Epps Mill Road	+651	Rutherford County (Unincorporated Areas).
	Approximately 4,730 upstream of Interstate 24	+774	
Murray Branch	Confluence with McElroy Branch	+653	Rutherford County (Unincorporated Areas).
	Approximately 1.4 miles upstream of Floration Road	+710	
Olive Branch	Approximately 2,950 feet upstream of Rocky Ford Road	+584	Rutherford County (Unincorporated Areas).
	Approximately 2.6 miles upstream of Rocky Ford Road	+684	
Overall Creek	Approximately 530 feet downstream of South Windrow Road	+634	Rutherford County (Unincorporated Areas).
	Approximately 9,910 feet upstream of South Windrow Road	+703	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
Panther Creek	Approximately 1,400 feet upstream of the confluence with West Fork Stones River.	+647	Rutherford County (Unincorporated Areas).
	Approximately 2.9 miles upstream of Midland Road	+702	
Puckett Creek	Just upstream of Old Salem Road	+627	Rutherford County (Unincorporated Areas).
	Approximately 4,300 feet upstream of Old Salem Road	+636	
Reed Creek	Confluence with Cripple Creek	+715	Rutherford County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Bradyville Pike	+892	
Rocky Fork Creek	Approximately 2,400 feet upstream of Almaville Road	+559	Rutherford County (Unincorporated Areas).
	Approximately 1,250 feet upstream of Laddie Lane	+649	
Short Creek	Confluence with Long Creek	+672	Rutherford County (Unincorporated Areas).
	Approximately 3,310 feet upstream of Millersburg Road	+840	
Stewart Creek	Approximately 60 feet upstream of Almaville Road	+603	Rutherford County (Unincorporated Areas).
	Approximately 940 feet upstream of Almaville Road	+605	
Stinking Creek	Approximately 410 feet upstream of Hollandale Road	+506	City of Lavergne.
	Approximately 1,220 feet upstream of Bill Stewart Blvd	+584	
Unnamed Tributary 007	Confluence with McKnight Branch	+624	Rutherford County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with McKnight Branch.	+650	
Unnamed Tributary 009	Confluence with Wades Branch	+574	Rutherford County (Unincorporated Areas).
	Approximately 570 feet upstream of Dunaway Chapel Road	+616	
Unnamed Tributary 011	Confluence with Unnamed Tributary 009	+574	Rutherford County (Unincorporated Areas).
	Approximately 1,720 upstream of Dunaway Chapel Road	+605	
Unnamed Tributary 014	Approximately 300 feet upstream of the confluence with Stewart Creek.	+572	Rutherford County (Unincorporated Areas).
	Approximately 4,210 feet upstream of State Route 96	+658	
Unnamed Tributary 018	Confluence with Cripple Creek	+598	Rutherford County (Unincorporated Areas).
	Approximately 3,540 feet upstream of Cranor Road	+605	
Unnamed Tributary 026	Approximately 700 feet upstream of the confluence with Stewart Creek.	+560	Rutherford County (Unincorporated Areas).
	Approximately 3,100 feet upstream of Almaville Road	+632	
Unnamed Tributary 028	Approximately 1,150 downstream of Almaville Road	+566	Rutherford County (Unincorporated Areas).
	Approximately 1,850 feet upstream of Woodland Trail	+630	
Unnamed Tributary 046	Confluence with Harpeth River	+714	Rutherford County (Unincorporated Areas).
	Approximately 970 feet upstream of N Highway 41A	+731	
Unnamed Tributary 047	Confluence with Harpeth River	+719	Rutherford County (Unincorporated Areas).
	Approximately 5,510 feet upstream of Rocky Glade Road	+759	
Unnamed Tributary 049	Approximately 3,670 feet downstream of N Highway 41A	+706	Rutherford County (Unincorporated Areas).
	Approximately 373 feet upstream of N Highway 41A	+724	
Unnamed Tributary 051	Confluence with Unnamed Tributary 052	+689	Rutherford County (Unincorporated Areas).
	Approximately 1,620 feet upstream of Manus Road	+703	
Unnamed Tributary 052	Confluence with Murray Branch	+686	Rutherford County (Unincorporated Areas).
	Approximately 2,980 feet upstream of Manus Road	+723	
Unnamed Tributary 055	Confluence with Middle Fork Stones River	+670	Rutherford County (Unincorporated Areas).
	Approximately 250 feet upstream of Broyles Road	+730	
Unnamed Tributary 056	Confluence with Unnamed Tributary 055	+693	Rutherford County (Unincorporated Areas).
	Approximately 2,500 feet upstream of Christiana Hoovers Gap Road.	+716	
Unnamed Tributary 057	Confluence with Unnamed Tributary 055	+702	Rutherford County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
	Approximately 680 feet upstream of the confluence with Unnamed Tributary 057.	+704	
Unnamed Tributary 058	Confluence with Middle Fork Stones River	+691	Rutherford County (Unincorporated Areas).
	Approximately 2,500 feet upstream of confluence with Middle Fork Stones River.	+706	
Unnamed Tributary 069	Confluence with Harpeth River	+726	Rutherford County (Unincorporated Areas).
	Approximately 5,400 feet upstream of Swamp Road	+734	
Unnamed Tributary 081	Confluence with Long Creek	+672	Rutherford County (Unincorporated Areas).
	Approximately 930 feet upstream of Johnson Road	+678	
Unnamed Tributary 092	Confluence with Panther Creek	+680	Rutherford County (Unincorporated Areas).
	Approximately 2,420 feet upstream of Panther Creek Road	+689	
Unnamed Tributary 116	Confluence with Hurricane Creek	+673	Rutherford County (Unincorporated Areas).
	Approximately 4,310 feet upstream of Jacobs Road	+743	
Unnamed Tributary 118	Confluence with Hurricane Creek	+711	Rutherford County (Unincorporated Areas).
	Approximately 3,350 feet upstream of confluence with Hurricane Creek.	+730	
Unnamed Tributary 119	Confluence with Hurricane Creek	+722	Rutherford County (Unincorporated Areas).
	Approximately 1,240 feet upstream of confluence with Hurricane Creek.	+732	
Unnamed Tributary 124	Confluence with Murray Branch	+676	Rutherford County (Unincorporated Areas).
	Approximately 4,000 feet upstream of confluence with Murray Branch.	+708	
Unnamed Tributary 126	Confluence with Murray Branch	+709	Rutherford County (Unincorporated Areas).
	Approximately 1,670 feet upstream of Gum Puckett Road	+751	
Unnamed Tributary 133	At the Rutherford/Cannon County Boundary	+614	Rutherford County (Unincorporated Areas).
	Approximately 1,960 feet upstream of the Rutherford/Cannon County Boundary.	+625	
Unnamed Tributary 141	Approximately 1,750 feet upstream of the confluence with Stewart Creek.	+567	Rutherford County (Unincorporated Areas).
	Approximately 2,130 feet upstream of E. North Creek Road	+594	
Unnamed Tributary 143	Approximately 800 feet downstream of Almaville Road	+571	Rutherford County (Unincorporated Areas).
	Approximately 1 mile upstream of Almaville Road	+640	
Unnamed Tributary 144	Approximately 750 feet upstream of the confluence with Stewart Creek.	+578	Rutherford County (Unincorporated Areas).
	Approximately 2.4 miles upstream of Almaville Road	+713	
Unnamed Tributary 150	Confluence with Christmas Creek	+698	Rutherford County (Unincorporated Areas).
	Approximately 610 feet upstream of confluence with Christmas Creek.	+698	
Unnamed Tributary 177	Confluence with Harpeth River	+721	Rutherford County (Unincorporated Areas).
	Approximately 2,970 feet upstream of confluence with Harpeth River.	+733	
Unnamed Tributary 179	Confluence with Harpeth River	+722	Rutherford County (Unincorporated Areas).
	Approximately 2,710 feet upstream of confluence with Harpeth River.	+729	
Unnamed Tributary 182	Confluence with Finch Branch	+585	City of Lavergne.
	Approximately 400 feet upstream of Akin Street	+610	
Unnamed Tributary 183	Approximately 490 feet upstream of confluence with Finch Branch.	+544	City of Lavergne.
	Approximately 1,790 feet upstream of Louisville and Nashville Railroad.	+585	
Unnamed Tributary 184	Approximately 1,000 feet upstream of E Sam Ridley Parkway	+513	Town of Smyrna.
	Approximately 3,700 feet upstream of E Sam Ridley Parkway	+524	
Unnamed Tributary 185	Confluence with Cheatham Branch	+778	City of Eagleville.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
	Approximately 450 feet upstream of Spring Street	+812	
Unnamed Tributary to West Fork Stones River.	Approximately 1,010 feet downstream of Kimbro Road	+626	Rutherford County (Unincorporated Areas).
	Approximately 1,460 feet upstream of Kimbro Road	+632	
Wades Branch	Confluence with East Fork Stones River	+527	Rutherford County (Unincorporated Areas).
	Approximately 3.1 miles upstream of State Route 102	+593	
West Fork Stones River	Approximately 360 feet downstream of Walnut Grove Road	+675	Rutherford County (Unincorporated Areas).
	Approximately 1.8 miles upstream of Midland Fosterville Road.	+765	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Eagleville

Maps are available for inspection at P.O. Box 68, Eagleville, TN 37060.
Send comments to the Honorable Nolan Barham Sr., Mayor, City of Eagleville, P.O. Box 68, Eagleville, TN 37060.

City of Lavergne

Maps are available for inspection at 5093 Murfreesboro Road, La Vergne, TN 37068.
Send comments to the Honorable Sherry Green, Mayor, City of La Vergne, 5093 Murfreesboro Road, La Vergne, TN, 37086.

City of Murfreesboro

Maps are available for inspection at P.O. Box 1139, Murfreesboro, TN 37133.
Send comments to the Honorable Tommy Bragg, Mayor, City of Murfreesboro, P.O. Box 1139, Murfreesboro, TN 37133.

Town of Smyrna

Maps are available for inspection at 315 South Lowery Street, Smyrna, TN 37167.
Send comments to the Honorable Bobby Spivey, Mayor, Town of Smyrna, 315 South Lowery Street, Smyrna, TN 37167.

Unincorporated Areas of Rutherford County

Maps are available for inspection at 1 Public Square South, Murfreesboro, TN 37130.
Send comments to the Honorable Nancy Allen, Mayor, Rutherford County, 1 Public Square, Room 101, Murfreesboro, TN 37130.

Salt Lake County, Utah and Incorporated Areas
Docket B–7454

Big Cottonwood Creek	Approximately 140 feet upstream of confluence with Jordan River.	+4,246	Salt Lake County (Unincorporated Areas).
	Approximately 60 feet upstream of Holladay Cottonwood Road.	+4,642	
	Approximately 120 feet upstream of Wasatch Boulevard	+4,896	
Little Cottonwood Creek	At confluence with Jordan Road	+4,252	Salt Lake County (Unincorporated Areas).
	Just upstream of 2000 East Street	+4,593	
	Approximately 600 feet upstream of Route 209	+5,384	
Little Willow Creek	At confluence with Willow Creek	+4,610	City of Draper, City of Sandy.
	Approximately 1500 feet upstream of Hidden Brook Drive	+5,094	
Midas Creek	At 11800 South Street	+4,562	City of Herriman, City of Riverton, Salt Lake County (Unincorporated Areas).
	Approximately 430 feet upstream of 6000 West Street	+4,920	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

Unincorporated Areas of Salt Lake County

Maps are available for inspection at the Public Works Department, Engineering, 451 South State Street, Suite N3100 Salt Lake City, UT 84190.
Send comments to Honorable Peter Corroon, Salt Lake County, 2001 South State Street, Suite N2100, Salt Lake City, UT 84190.

City of Draper

Maps are available for inspection at 12441 South 900 East, Draper, UT 84020.
Send comments to Honorable Darrell H. Smith, Mayor, City of Draper, 12441 South 900 East, Draper, UT 84020.

City of Herriman

Maps are available for inspection at 13011 South Pioneer Street, Herriman, UT 84065.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground	Communities affected
Send comments to Honorable J. Lynn Crane, Mayor, City of Herriman, 13011 South Pioneer Street, Herriman, UT 84065.			
City of Riverton			
Maps are available for inspection at 12765 South 1400 West, Riverton, UT 84065.			
Send comments to Honorable R. Mont Evans, Mayor, City of Riverton, 12765 South 1400 West, Riverton, UT 84065.			
City of Sandy City			
Maps are available for inspection at 10000 Centennial Parkway, Sandy, UT 84070.			
Send comments to Honorable Tom Dolan, Mayor, City of Sandy City, 10000 Centennial Parkway, Sandy, UT 84070.			

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17271 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: *Effective Dates:* The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
Sumter County, South Carolina Docket No.: FEMA–B–7454				
South Carolina	Sumter County	Beech Creek	Approximately 1.1 miles upstream of Barnwell Drive.	*180
			Approximately 100 feet downstream of Edgehill Road.	*225
		Beech Creek Tributary 1	At the confluence with Beech Creek	*168
			Approximately 150 feet downstream of Raccoon Road.	*193
		Brunson Branch	At the confluence with Mulberry Branch	*133
			Approximately 700 feet upstream of Oswego Highway.	*144
		Brunson Branch Tributary 1	At the confluence with Brunson Branch	*134
			Approximately 0.6 mile upstream of the confluence of Cut Through 1.	*143
		Cane Savannah Creek	Approximately 200 feet downstream of Kolb Road.	*138
			Approximately 250 feet upstream of Wedgefield Highway.	*164
		Cut Through 1	At the confluence with Brunson Branch Tributary 1.	*140
			Just downstream of Jerry Street	*144
		Cut Through 2	At the confluence with Mulberry Branch	*134
			Just downstream of Jerry Street	*144
		Green Swamp	Approximately 250 feet downstream of Mason Road.	*169
			Approximately 50 feet downstream of Brewington Road.	*189
		Hatchet Camp Branch	At confluence with Cane Savannah Creek	*160
			Approximately 1.1 miles upstream of Bronco Road.	*256
		Hope Swamp	At the confluence with Pudding Swamp	*108
			Approximately 100 feet downstream of Narrow Paved Road.	*116
		Horsepen Branch	At the confluence with Green Swamp	*181
			Approximately 250 feet downstream of Stamey Livestock Road.	*203
		Long Branch	Approximately 330 feet downstream of Broad Street.	*173
			Approximately 350 feet downstream of Frierson Road.	*223
		Lynches River	Approximately 7.7 miles downstream of Amwell Church Road.	*99
			Approximately 1000 feet downstream of Interstate 95.	*120
		Mile Branch	At the confluence with Brunson Branch	*140
			Approximately 0.2 mile downstream of U.S. Route 378 and 76.	*143
		Mulberry Branch	At the confluence with Rocky Bluff Swamp.	*133
			Approximately 150 feet downstream of Main Street.	*167
		Mulberry Branch Tributary 1	At the confluence with Mulberry Branch	*134
			Approximately 1.3 miles upstream of the confluence with Mulberry Branch.	*143
		Mush Swamp	Approximately 850 feet downstream of Loring Mill Pond Road.	*162
			Approximately 50 feet upstream of Eagle Road.	*204
		Nasty Branch	At the confluence with Cane Savannah Creek.	*128
			Approximately 250 feet downstream of Bethel Church Road.	*175
		Noyts Branch	At the confluence of Green Swamp	*129
			Approximately 350 feet upstream of Main Street.	*159
		Pocalla Creek	At the confluence with Pocotaligo River	*121

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD) +Elevation in feet (NAVD) Modified
			Approximately 250 feet downstream of South Guignard Drive.	*168
		Pudding Swamp	Approximately 300 feet downstream of Forge Road.	*103
			Approximately 200 feet downstream of Trinity Road.	*125
		Rocky Bluff	Approximately 0.8 mile upstream of the confluence of Mulberry Branch.	*134
			Approximately 900 feet downstream of Westbury Mill Road.	*168
		Shot Pouch Branch	At the confluence with Green Swamp	*138
			Approximately 450 feet downstream of Jefferson Road.	*176
		Sooks Branch	At the confluence of Green Swamp	*133
			Approximately 75 feet upstream of Council Lane.	*157

#Depth in feet above ground
*National Geodetic Vertical Datum
+North American Vertical Datum

ADDRESSES:

City of Sumter:

Maps are available for inspection at 33 North Main Street, Sumter, SC 29150.
Send comments to The Honorable Joseph T. McElveen Jr., Mayor, City of Sumter, P.O. Box 1449, Sumter, SC 29151.

Unincorporated Areas of Sumter County:

Maps are available for inspection at 33 North Main Street, Sumter, SC 29150.
Send comments to Mr. William T. Noonan, Sumter County Administrator, 13 East Canal Street, Sumter, SC 29150.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17262 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: Effective Dates: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30,

1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground. Modified	Communities affected
Pender County, North Carolina and Incorporated Areas Docket Nos.: FEMA–D–7626 and D–7662			
Angola Creek	At the confluence with Holly Shelter Creek	+20	Pender County (Unincorporated Areas).
	Approximately 0.2 mile downstream of the Pender/Duplin County boundary.	+31	
Tributary 3	At the confluence with Angola Creek	+23	Pender County (Unincorporated Areas).
	Approximately 500 feet upstream of Cypress Creek Road	+33	
Tributary 4	At the confluence with Angola Creek	+26	Pender County (Unincorporated Areas).
	Approximately 1.4 miles upstream of NC Highway 50	+42	
Ashes Creek	At the confluence with Northeast Cape Fear River	+17	Pender County (Unincorporated Areas).
	Approximately 2.8 miles upstream of Southwest Lake	+35	
Bear Branch	At the confluence with Black River	+16	Pender County (Unincorporated Areas).
	Approximately 2,000 feet upstream of Blueberry Road	+28	
Beckys Creek	Approximately 1.1 miles upstream of the Intracoastal Waterway.	+8	Pender County (Unincorporated Areas).
	Approximately 1.0 mile upstream of State Route 210	+29	
Bee Branch	At the confluence with Cypress Creek (near Wards Corner)	+45	Pender County (Unincorporated Areas).
	Approximately 350 feet upstream of Shiloh Road	+55	
Big Branch	At the confluence with Colvins Creek	+14	Pender County (Unincorporated Areas).
	Approximately 875 feet upstream of the confluence with Big Branch Tributary.	+24	
Big Branch Tributary	At the confluence with Big Branch	+23	Pender County (Unincorporated Areas).
	Approximately 0.37 mile upstream of the confluence with Big Branch.	+33	
Black River	At the confluence with Cape Fear River	+9	Pender County (Unincorporated Areas).
	Approximately 350 feet upstream of Beattys Bridge Road	+24	
Burgaw Creek	At the confluence with Northeast Cape Fear River	+15	Pender County (Unincorporated Areas), Town of Burgaw.
	Approximately 400 feet upstream of West Wilmington Street	+50	
Cape Fear River	Approximately 0.6 mile downstream of the confluence with Black River.	+8	Pender County (Unincorporated Areas).
	At the Bladen/Pender County boundary	+23	
Catskin Creek	At the confluence with Merricks and Players Creek	+9	Pender County (Unincorporated Areas).
	Approximately 6.6 miles upstream of the confluence with Merricks and Players Creek.	+34	
Colvins Creek	At the confluence with Black River	+16	Pender County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Beattys Bridge Road	+70	
Tributary	At the confluence with Colvins Creek	+25	Pender County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Slocum Trail	+44	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground. Modified	Communities affected
Cypress Creek (near Stag Park)	At the confluence with Northeast Cape Fear River	+13	Pender County (Unincorporated Areas), Village of Saint Helena.
	Approximately 800 feet upstream of Front Street	+57	
Cypress Creek (near Wards Corner).	At the confluence with Long Creek	+25	Pender County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Shiloh Road	+53	
Doctors Creek	At the confluence with Rockfish Creek	+39	Pender County (Unincorporated Areas).
	Approximately 0.25 mile upstream of Katie Ford Road	+51	
Dry Branch	Approximately 20 feet upstream of NC Highway 421	+51	Pender County (Unincorporated Areas).
	Approximately 1.1 miles upstream of NC Highway 421	+55	
Godfrey Creek	At the confluence with Harrisons Creek	+16	Pender County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Harrisons Creek.	+32	
Guffords Branch	At the confluence with Rileys Creek	+10	Pender County (Unincorporated Areas).
	Just downstream of Highway 210	+11	
Harrisons Creek	At State Route 210	+8	Pender County (Unincorporated Areas).
	Approximately 300 feet upstream of Holiday Drive	+29	
Holly Shelter Creek	At the confluence with Northeast Cape Fear River	+17	Pender County (Unincorporated Areas).
	At the Pender/Onslow County boundary	+37	
Island Creek Tributary	Approximately 0.4 mile upstream of the confluence with Island Creek.	+9	Pender County (Unincorporated Areas).
	Approximately 2.8 miles upstream of the confluence with Island Creek.	+27	
Jones Creek	At the confluence with Colvins Creek	+34	Pender County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Beattys Bridge Road	+36	
Kellys Creek	At the confluence with Rileys Creek	+25	Pender County (Unincorporated Areas).
	Approximately 200 feet upstream of Little Kelly Road	+29	
Lillington Creek	At the confluence with Northeast Cape Fear River	+13	Pender County (Unincorporated Areas).
	Approximately 2.7 miles upstream of Shaw Highway	+29	
Long Creek	Approximately 3.5 miles upstream of the confluence with Northeast Cape Fear River.	+7	Pender County (Unincorporated Areas).
	At NC Highway 53	+31	
Lillington Creek Tributary	At the confluence with Lillington Creek	+13	Pender County (Unincorporated Areas).
	Approximately 0.9 mile upstream of Vogler Drive	+17	
Long Creek Tributary	At the confluence with Long Creek	+26	Pender County (Unincorporated Areas).
	Approximately 0.3 mile upstream of the confluence with Long Creek.	+30	
Lewis Creek	Approximately 1,500 feet upstream of the confluence with Northeast Cape Fear River.	+23	Pender County (Unincorporated Areas).
	Approximately 600 feet downstream of U.S. Highway 117	+24	
Merricks Creek	At State Route 210	+8	Pender County (Unincorporated Areas).
	At the confluence with Catskin Creek	+9	
Mill Branch (of Moores Creek)	Approximately 0.7 mile downstream of NC Highway 53	+43	Pender County (Unincorporated Areas), Town of Atkinson.
	At Church Street (NC Highway 53)	+64	
Mill Creek	At the confluence with Rileys Creek	+27	Pender County (Unincorporated Areas).
	Approximately 200 feet upstream of Highsmith Road	+30	
Mill Pond	At the confluence with Holly Shelter Creek	+17	Pender County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Highway 53	+17	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground. Modified	Communities affected
Moores Creek	At the confluence with Holly Shelter Creek	+27	Pender County (Unincorporated Areas).
	At the Pender/Onslow County boundary	+43	
Moores Creek (near Atkinson)	Approximately 1.2 miles upstream of Highway 210	+16	Pender County (Unincorporated Areas).
	Approximately 0.3 mile downstream of John Henry Store Road.	+20	
Tributary 1	At the confluence with Moores Creek	+33	Pender County (Unincorporated Areas).
	At the confluence with Moores Creek	+51	
	At the Pender/Onslow County boundary	+39	Pender County (Unincorporated Areas).
Tributary 2	At the confluence with Moores Creek	+46	
	At the confluence with Moores Creek	+37	Pender County (Unincorporated Areas).
Tributary 6	At the confluence with Moores Creek Tribuatory 6.	+42	Pender County (Unincorporated Areas).
Tributary 7	At the confluence with Moores Creek Tributary 6	+42	Pender County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Cypress Creek Road	+74	
Northeast Cape Fear River	At the upstream side of State Route 210	+8	Pender County (Unincorporated Areas).
	At the Pender/Duplin County boundary	+26	
Pike Creek	At the confluence with Northeast Cape Fear River	+10	Pender County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Interstate 40	+34	
Players Creek	At the confluence with Merricks Creek	+9	Pender County (Unincorporated Areas).
	Approximately 2.5 miles upstream of the confluence with Merricks Creek.	+25	
Rileys Creek	At the confluence with Long Creek	+9	Pender County (Unincorporated Areas).
	At the confluence with Mill Creek and Rizzo Creek	+27	
Rizzo Creek	At the confluence with Rileys Creek	+27	Pender County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the confluence with Rileys Creek.	+29	
Rockfish Creek	At the confluence with Northeast Cape Fear River	+26	Pender County (Unincorporated Areas).
	At the confluence with Doctors Creek	+39	
Sandy Run Swamp	At the confluence with Holly Shelter Creek	+21	Pender County (Unincorporated Areas).
	At the Pender/Onslow County boundary	+29	
Sawyer Creek	At the confluence with Sills Creek	+29	Pender County (Unincorporated Areas).
	Approximately 125 feet downstream of Highway 11	+42	
Shaken Creek	At the confluence with Holly Shelter Creek	+18	Pender County (Unincorporated Areas).
	Approximately 0.3 mile downstream of the Pender/Onslow County boundary.	+34	
Shelter Swamp Creek	At the confluence with Sandy Run Swamp	+25	Pender County (Unincorporated Areas).
	Approximately 1,900 feet upstream of the Onslow Pender County boundary.	+34	
Sills Creek	At the confluence with Sawyer Creek	+29	Pender County (Unincorporated Areas).
	Approximately 600 feet downstream of Old Mill Road	+33	
Trumpeter Swamp	At the confluence with Catskin Creek	+16	Pender County (Unincorporated Areas).
	Approximately 1.2 miles upstream of J. A. Drive	+42	
Turkey Creek	At the upstream side of State Route 133	+8	Pender County (Unincorporated Areas).
	Approximately 2.3 miles upstream of State Route 133	+22	
Tributary	At the confluence with Turkey Creek	+11	Pender County (Unincorporated Areas).
	Approximately 850 feet upstream of Arvida Spur Road	+28	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground. Modified	Communities affected
Washington Creek	At the confluence with Northeast Cape Fear River	+25	Pender County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Interstate 40	+27	
Tributary	At the confluence with Washington Creek	+27	Pender County (Unincorporated Areas).
	Approximately 0.7 mile upstream of the confluence with Washington Creek.	+44	
White Oak Branch	At the confluence with Tuckahoe Branch	+43	Pender County (Unincorporated Areas).
	Approximately 0.6 mile downstream of Shiloh Road	+53	

ADDRESSES

City of Burgaw

Maps available for inspection at the Burgaw City Hall, 109 North Walker Street, Burgaw, North Carolina.

Pender County (Unincorporated Areas)

Maps available for inspection at the Pender County Planning Department, 805 South Walker Street, Burgaw, North Carolina.

Village of Saint Helena

Maps available for inspection at the Saint Helena Village Hall, 330 Main Street, Burgaw, North Carolina.

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17274 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 71, No. 200
Tuesday, October 17, 2006

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25739; Directorate Identifier 2006–CE–46–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Models 58 and G58 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company (RAC) Models 58 and G58 airplanes with optional propeller unfeathering accumulators installed. This proposed AD would require you to inspect the left propeller accumulator oil tube assembly for any chafing; replace the propeller accumulator oil tube assembly if any chafing is found; and reposition and secure with clamps both the left engine manifold pressure hose and its metal identification tags to avoid contact with other tubes, hoses, electrical wires, parts, components, and structure. This proposed AD results from several reports on the affected airplanes of chafing damage on the left propeller accumulator oil tube assembly. This includes an in-flight oil leak from the left engine on an RAC Model G58 airplane. We are proposing this AD to detect, correct, and prevent any chafing damage of the left propeller accumulator oil tube assembly, which could result in loss of engine oil. Loss of engine oil may lead to fire or smoke in the engine compartment, inability to unfeather the propeller, engine damage, or loss of engine power.

DATES: We must receive comments on this proposed AD by December 18, 2006.

ADDRESSES: Use one of the following addresses to comment on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

FOR FURTHER INFORMATION CONTACT: Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number, ''FAA–2006–25739; Directorate Identifier 2006–CE–46–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive concerning this proposed AD.

Discussion

We received several reports of chafing damage to the propeller accumulator oil tube assembly on RAC Models 58 and G58 airplanes. The damage occurs when the left engine manifold pressure hose and its metal identification tags rubs against the tube assembly. Included in these reports was an in-flight oil leak on an RAC Model G58 airplane.

The RAC issued Safety Communiqué No. 271, dated May 2006, that recommended an inspection for possible chafing between the left engine manifold pressure hose and its metal identification tags and the left propeller accumulator oil tube assembly.

This condition, if not corrected, could result in loss of engine oil. Loss of engine oil may lead to fire or smoke in the engine compartment, inability to unfeather the propeller, engine damage, or loss of engine power.

Relevant Service Information

We have reviewed RAC Mandatory Service Bulletin No. SB 61–3806, issued: August 2006.

The service information describes procedures for:

- Inspecting the left engine manifold pressure hose and its metal identification tags for proper clearance to avoid any chafing with the propeller accumulator oil tube assembly;
- Inspecting the left propeller accumulator oil tube assembly for chafing damage and replacing if any chafing damage is found; and
- Relocating and securing with clamps the manifold pressure hose and its metal identification tags to ensure clearance between it and all tubes, hoses, electrical wires, parts, components, and structure.

FAA's Determination and Requirements of the Proposed AD

We are proposing this AD because we evaluated all information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design. This proposed AD would require you to inspect the left propeller accumulator oil tube assembly for any chafing; replace the propeller accumulator oil tube assembly if any chafing is found; and reposition and secure with clamps the left manifold pressure hose and its metal identification tags to ensure clearance between it and all tubes, hoses, electrical wires, parts, components, and structure.

Costs of Compliance

We estimate that this proposed AD would affect 49 airplanes in the U.S. registry.

We estimate the following costs to do the proposed inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 work-hour × $80 per hour = $80	N/A	$119	$5,831

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need this replacement:

Labor cost	Parts cost	Total cost per airplane
1 work-hour × $80 per hour = $80	$39	$119

RAC will provide warranty credit as specified in RAC Mandatory Service Bulletin No. SB 61–3806, issued: August 2006.

Authority for this Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket that contains the proposed AD, the regulatory evaluation, any comments received, and other information on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone (800) 647–5227) is located at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Raytheon Aircraft Company: Docket No. FAA–2006–25739; Directorate Identifier 2006–CE–46–AD.

Comments Due Date

(a) We must receive comments on this airworthiness directive (AD) action by December 18, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 58 and G58 airplanes, serial numbers TH–2097 through TH–2150, with optional propeller unfeathering accumulators installed, that are certificated in any category.

Unsafe Condition

(d) This AD results from several reports on the affected airplanes of chafing damage on the left propeller accumulator oil tube assembly. This includes an in-flight oil leak from the left engine on an RAC Model G58 airplane.We are issuing this AD to detect, correct, and prevent any chafing damage of the left propeller accumulator oil tube assembly, which could result in loss of engine oil. Loss of engine oil may lead to fire or smoke in the engine compartment, inability to unfeather the propeller, engine damage, or loss of engine power.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) Inspect the left propeller accumulator oil tube assembly for chafing.	*For airplanes that have not had a 100-hour TIS inspection or the inspection following Raytheon Safety Communiqué No. 271, dated May 2006:* Within the next 25 hours TIS after the effective date of this AD. *For airplanes that have had a 100-hour TIS inspection or the inspection following Raytheon Safety Communiqué No. 271, dated May 2006:* Within the next 50 hours TIS after the effective date of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin No. SB 61–3806, issued: August 2006.
(2) If any chafing is found in the inspection required by paragraph (e)(1) of this AD, replace the propeller accumulator oil tube assembly.	Before further flight after the inspection required by paragraph (e)(1) of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin No. SB 61–3806, issued: August 2006.
(3) Reposition and secure with clamps the left manifold pressure hose and its metal identification tags to ensure clearance between it and all tubes, hoses, electrical wires, parts, components, and structure.	Before further flight after the inspection or replacement required in paragraphs (e)(1) and (e)(2) of this AD.	Follow Raytheon Aircraft Company Mandatory Service Bulletin No. SB 61–3806, issued: August 2006.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Wichita Aircraft Certification Office (ACO), FAA, ATTN: Jeff Pretz, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(g) To get copies of the service information referenced in this AD, contact Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is Docket No. FAA–2006–25739; Directorate Identifier 2006–CE–46–AD.

Issued in Kansas City, Missouri, on October 10, 2006.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–17188 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22806; Directorate Identifier 2005–SW–04–AD]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Model 206B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: The FAA withdraws a notice of proposed rulemaking (NPRM) that proposed adopting a new airworthiness directive (AD) for Bell Helicopter Textron (Bell) Model 206B helicopters modified with Aeronautical Accessories, Inc. (AAI) Supplemental Type Certificate (STC) No. SH8435SW or SH8419SW with energy attenuating seat installation wire (energy attenuating wire). The proposed AD would have required replacing certain energy attenuating wire with airworthy energy attenuating wire. Since issuing the proposed AD, we have determined that no unsafe condition exists with respect to the STC installed energy attenuating wire. Accordingly, the proposed AD is withdrawn.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, Washington, DC. This docket number is FAA–2005–22806; the directorate identifier for this docket is 2005–SW–04–AD.

FOR FURTHER INFORMATION CONTACT: Marc Belhumeur, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5177, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Discussion

We proposed to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) with an NPRM for a new AD for Bell Model 206B helicopters with AAI STC No. SH8435SW or SH8419SW. That NPRM was published in the **Federal Register** on October 28, 2005 (70 FR 62085). The NPRM would have required replacing energy attenuating wire manufactured or invoiced during a specified time frame. The NPRM resulted from the disclosure that certain energy attenuating wire may not have the yield strength necessary to allow seats to attenuate energy during an emergency landing. The proposed actions were intended to prevent failure of a seat to attenuate energy during an emergency landing and resulting in injury to an occupant.

Actions Since NPRM Was Issued

Since issuing the NPRM, we have determined that the seat with the affected energy attenuating wire will support the occupant adequately during an emergency landing and therefore no unsafe condition exists for Bell Model 206B helicopters modified with the two STCs.

FAA's Conclusions

Upon further consideration, we have determined that the actions proposed in the NPRM are not needed for Bell Model 206B helicopters. Accordingly, the NPRM is withdrawn.

Withdrawal of the NPRM does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Impact

Since this action only withdraws an NPRM, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, we withdraw the NPRM, Docket No. FAA–2005–22806; Directorate Identifier 2005–SW–04–AD, which was published in the **Federal Register** on October 28, 2005 (70 FR 62085).

Issued in Fort Worth, Texas, on September 29, 2006.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–17185 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25983; Directorate Identifier 2006–SW–11–AD]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc. Model MD900 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for MD Helicopters, Inc. (MDHI) Model MD900 series helicopters. The AD would require modifying the pilot and co-pilot dual-control directional pedal assemblies, or the pilot single-control directional pedal assembly (directional control pedal assembly). This proposal is prompted by an accident which has been attributed to loss of directional control due to failure of the welds in the directional control pedal assembly. The actions specified by the proposed AD are intended to prevent fatigue cracking in the welds that connect the directional control pedal to the pedal shaft, resulting in loss of directional control and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before December 18, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically;
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically;
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590;
- Fax: 202–493–2251; or
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this proposed AD from MD Helicopters, Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax 480–346–6813, or on the Web at *http://www.mdhelicopters.com*.

You may examine the comments to this proposed AD in the AD docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Roger Durbin, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2006–25983, Directorate Identifier 2006–SW–11–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://dms.dot.gov*.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Management System (DMS) Docket Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located at the plaza level of the Department of Transportation Nassif Building in Room PL–401 at 400 Seventh Street, SW., Washington, DC. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

This document proposes adopting a new AD for MDHI Model MD900 series helicopters, serial numbers (S/N) 900–00008 through 900–00111, 900–00113, and 900–00114. The AD would require modifying the directional control pedal assembly by removing the existing pedals, removing the welded pedal support plate from the pedal shafts, installing a new pedal mount on each pedal shaft using rivets, reinstalling the pedals on the new pedal mounts, and marking the modified directional control pedal assembly with a part number. This proposal is prompted by an accident which has been attributed to loss of directional control due to failure of the welds in the directional control pedal assembly. The actions specified by the proposed AD are intended to prevent fatigue cracking in the welds that connect the directional control pedal to the pedal shaft, resulting in loss of directional control and subsequent loss of control of the helicopter.

We have reviewed MD Helicopters Service Bulletin SB900–100, dated April 5, 2006, which describes procedures for modifying the directional control pedal assembly.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require modifying the directional control pedal assembly, part number (P/N) 900C1012007–107, –109, –111, –113, or 900C6012007–111 (pilot dual control); or P/N 900C1012207–105, –107, –109, –111, or –113 (co-pilot dual control); or P/N 900C1010007–107, –109, –111, –113, or 900C6010007–111 (pilot single control), by removing the existing pedals, removing the welded pedal support plate from the pedal shafts, and installing a directional control pedal modification kit, P/N SBK–010. Also, this AD would require ink stamping the P/N, 90005340111–101, on the pedal shaft of each modified directional

control pedal assembly using permanent ink. The actions would be required to be accomplished by following specified portions of the service bulletin described previously.

We estimate that this proposed AD would affect 30 helicopters of U.S. registry, and modifying the directional control pedal assembly would take approximately 8 work hours for helicopters with single pilot controls installed, or 16 work hours for helicopters with dual pilot and co-pilot controls installed, at an average labor rate of $80 per work hour. Required parts would cost approximately $775 for helicopters with dual pilot and co-pilot controls installed. The manufacturer has stated in its service bulletin that pedal kits may be provided at no cost, and up to 8 work hours of labor for each set of directional control pedals may be provided at authorized MDHI service centers (two sets of directional control pedals are required for helicopters with dual pilot and co-pilot controls installed). Based on these figures, the total cost impact of the proposed AD on U.S. operators would be $61,650 per helicopter, assuming that dual pilot and co-pilot controls are installed.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. Additionally, this proposed AD would not have a substantial direct effect 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.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a draft economic evaluation of the estimated costs to comply with this proposed AD. See the DMS to examine the draft economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

MD Helicopters, Inc.: Docket No. FAA–2006–25983; Directorate Identifier 2006–SW–11–AD.

Applicability: Model MD900 series helicopters, serial numbers (S/N) 900–00008 through 900–00111, 900–00113, and 900–00114, certificated in any category.

Compliance: Required within 90 days after the effective date of this AD, unless accomplished previously.

To prevent fatigue cracking in the welds which connect the pilot and co-pilot dual-control, or pilot single-control directional control pedal (directional control pedal) to the pedal shaft, resulting in loss of directional control and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify each directional control pedal assembly, part number (P/N) 900C1012007–107, –109, –111, –113, or 900C6012007–111 (pilot dual control); or P/N 900C1012207–105, –107, –109, –111, or –113 (co-pilot dual control); or P/N 900C1010007–107, –109, –111, –113, or 900C6010007–111 (pilot single control), by removing the existing pedals, removing the welded pedal support plate from the pedal shafts, and installing a directional control pedal modification kit, P/N SBK–010, in accordance with part 2, Accomplishment Instructions, in MD Helicopters Service Bulletin SB900–100, dated April 5, 2006. One modification kit is required to be installed on helicopters with single controls and two modification kits are required to be installed on helicopters with dual controls.

(b) Using a permanent ink, ink stamp the P/N, 90005340111–101, on the pedal shaft of each modified directional control pedal assembly.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Los Angeles Aircraft Certification Office, FAA, Attn: Roger Durbin, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5233, fax (562) 627–5210, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on September 28, 2006.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E6–17186 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Parts 22 and 51

RIN 1400–AC22

[Public Notice 5558]

Card Format Passport; Changes to Passport Fee Schedule

AGENCY: State Department.

ACTION: Proposed Rule.

SUMMARY: Section 7209 of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108–458, 118 Stat. 3638 (Dec. 17, 2004), provides that U.S. citizens and nonimmigrant aliens may enter the U.S. only with passports or such alternative documents as the Secretary of Homeland Security may designate as satisfactorily establishing identity and citizenship. The statute requires that the Secretary of Homeland Security, in consultation with the Secretary of State, develop and implement a plan to require virtually all travelers entering the U.S. to present a passport, other document, or combination of documents, that are ''deemed by the Secretary of Homeland Security to be sufficient to denote identity and citizenship. Section 7209 expressly limits the waiver of documentation requirements for U.S. citizens under section 215 (b) of the Immigration and Nationality Act (INA)[1] and eliminates the waiver of documentation requirements for categories of

[1] 8 U.S.C. 1185 (b).

individuals for whom documentation requirements have previously been waived (citizens of Canada, Mexico, and Bermuda) under section 212 (d)(4) (B) of the INA.[2] U.S. citizens and nonimmigrant aliens from Canada, Mexico, and Bermuda will be required to comply with the new document requirements of section 7209.[3] The legislation also requires that the Department of Homeland Security (DHS) and Department of State seek to facilitate the frequent travel of those living in border communities. This proposed rule addresses the travel facilitation requirement of this legislation. The administration's proposal to address the remainder of the legislative requirements as set forth in section 7209, called the Western Hemisphere Travel Initiative (WHTI), is being addressed in separate rulemakings.

The passport card is intended as a lower cost means of establishing identity and nationality for American citizens in two limited situations—for citizens crossing U.S. land borders and traveling by sea between the U.S., Canada, Mexico, the Caribbean or Bermuda. The passport card is not designed to be a globally interoperable travel document as defined by the International Civil Aviation Organization (ICAO). Designing a card format passport for wide use, including by air travelers, would inadvertently undercut the broad based international effort to strengthen civil aviation security and travel document specifications to address the post 9/11 threat environment. Moreover, in its recent consideration of the FY 2007 Appropriations Act for the Department of Homeland Security, the Congress, while allowing for the use of the passport card by citizens traveling by sea between the U.S., Canada, Mexico, the Caribbean or Bermuda, did not make parallel changes regarding international air travel.

DATES: The Department of State will accept comments from the public up to December 18, 2006.

[2] 8 U.S.C.1182 (d)(4)(B).

[3] Section 7209 does not apply to Lawful Permanent Residents, who will continue to be able to enter the U.S. upon presentation of a valid Form I–551, Alien Registration Card, or other valid evidence of permanent resident status. Section 211 (b) of the INA, 8 U.S.C. 1181(b). It also does not apply to alien members of U.S. Armed Forces traveling under official orders. Section 284 of INA, 8 U.S.C. 1354. Additionally, section 7209 does not change current requirements for nonimmigrant aliens from anywhere other than Canada, Mexico, or Bermuda. *See* section 212 (d)(4)(B) of the INA, 8 U.S.C. 1182 (d)(4)(B) and 8 CFR 212.1.

ADDRESSES: You may submit comments, identified by any of the following methods:

- *Mail (paper, disk, or CD–ROM submissions):* Comments by mail are to be addressed to the Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, U.S. Department of State, 2100 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.
- *Internet:* Comments by Internet are to be sent to *http://www.regulations.gov/index.cfm*. This notice can also be viewed from this Internet address.
- *Instructions:* All submissions must include the agency name and docket number. All comments will be posted without change to *http://www.regulations.gov,* including any personal information sent with each comment.

FOR FURTHER INFORMATION CONTACT: Consuelo Pachon, Office of Passport Policy, Planning and Advisory Services, Bureau of Consular Affairs, 2100 Pennsylvania Avenue, NW., Suite 3000, Washington, DC, telephone number 202–663–2431.

SUPPLEMENTARY INFORMATION: The U.S. passport is the premier document for international travel by U.S. citizens and nationals because of its security features, professional adjudication, name checking conventions, and interoperability with global machine-readable passports and Electronic Passport (ePassport) standards. Pursuant to 22 U.S.C. 211(a), the Secretary of State is charged with granting and issuing U.S. passports. Consular officers of the Department of State utilize information in the passport books when evaluating applications for replacement passports and determining eligibility for overseas citizens services. DHS and Customs and Border Protection (CBP) also utilize this information in determining citizenship and identity at ports of entry.

Many U.S. citizens are expected to apply for U.S. passports to fulfill the document requirement of the WHTI program under Section 7209 of IRTPA. Passport Services is committed to meeting the increased demand. Passport Services has seen an increase in passport demand from a base level of seven million passports in 2003 to an expected total of 12–12.5 million in fiscal year 2006. Demand for passports is forecast to continue to increase to 16 million or more in FY–2007 and thereafter. However, the Department of State recognizes that there are circumstances where, due to reasons of both cost and ease of use, the traditional book-style U.S. passport may not be the optimal solution for international travelers along the northern and southern land borders of the U.S., or international sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda. Therefore, the Department of State, in consultation with the DHS, is proposing an alternative format passport specifically designed for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda.

The Card Format Passport

The term ''passport'' means any travel document issued by the competent authority of a sovereign nation showing the bearer's identity and nationality that is deemed valid for the entry of the bearer into a foreign country. 22 U.S.C. 211(a) provides that the Secretary of State has the authority to issue passports for the U.S.

Executive Order No. 11295 of August 5, 1966, 31 FR 10603, provides that the Secretary of State is designated and empowered to exercise the authority of the President to designate and prescribe rules governing the granting, issuing, and verifying of passports. 22 U.S.C. 2705 provides that a valid passport, if valid for the maximum period permitted by law, has the same force and effect as proof of citizenship as a certificate of naturalization or certificate of citizenship. Under this proposed rule, passport cards, like passport books, would be issued for a ten-year validity period for U.S. citizens sixteen years old and older, and for a five-year validity period for U.S. citizens less than 16 years of age. The Department of State proposes to utilize the same application procedures and adjudication standards for the passport book and card and to permit U.S. citizens to hold both a passport book and card simultaneously. In addition, if a passport applicant holds a valid passport book, the applicant may apply for a passport card as a ''renewal'' and pay the lower renewal fee rate.

Because 22 U.S.C. 211(a) does not prescribe limitations on the format of a passport, the Secretary of State proposes to issue a card format for the passport, herein after referred to as the ''passport card,'' for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda. The passport card will show the bearer's origin, identity, and nationality and will be subject to existing passport statutes. As with the passport book, the passport card will be issued only to those owing

allegiance to the U.S.[4] and will require a written application and oath for first time applicants.[5] There is precedence for limited use passports. For example, The Department of State issues passports only for one time use to allow the traveler to return to the U.S.

The passport card is designed specifically to address the needs and travel patterns of those who live in land border communities and frequently cross the border in their day-to-day activities. The technical architecture of the passport card is designed to address the operational needs of pedestrian and vehicular traffic in the land border environment, and international sea travel as discussed herein, but not the operational needs of inspection at airports. Moreover, the passport card is intended not only to enhance security efforts for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda, but is also intended to assist DHS in expediting the movement of legitimate travel within the Western Hemisphere.

In particular, the land border presents complex operational challenges, in that a tremendous amount of traffic must be processed in a short amount of time. There are often several passengers in a vehicle, and multiple vehicles arriving at one time at each land border port-of-entry. Many of the people encountered crossing at the land border ports of entry are frequent crossers. However, CBP does not receive advance information on these land border travelers. For these reasons, the Department of State, in consultation with DHS, agreed to develop a technology-based solution.

The passport card is designed and authorized for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda and will not be a globally interoperable document. Therefore, the ICAO standards and recommendations for globally interoperable passports would not apply to passport cards. The passport card will be a highly secure document with many features consistent with ICAO 9303 Part 3 definitions of TD–1 specifications. It will use a full facial image printed on the card as the biometric identifier in conformity with ICAO standards for ePassport images and utilize the international standard for Machine Readable Zone (MRZ) encryption.

The data printed on the face of the passport card will be the same as that currently shown on the data page of the U.S. passport—bearer's facial image, full name, date and place of birth, passport card number, dates of validity and issuing authority. The reverse side of the passport card will carry a machine-readable zone and notation that the card is valid only for international land and sea travel between the U.S., Canada, Mexico, the Caribbean, and Bermuda. In addition, each passport card will utilize Radio Frequency (RF) technology to store and transmit only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. This reference number will be assigned by Department of State at the time the passport card is issued and no personal or biographic information will be stored or transmitted using Radio Frequency (RF) technology. Presenting the passport card will allow the linked information to be retrieved from the secure DHS database to allow the CBP officer to compare the citizen presenting him or herself for entry into the U.S. with the original issuance record to ensure that it is the same person. This database could include additional information, for example, information about the bearer's membership in one of CBP's international trusted traveler programs, NEXUS, SENTRI, or FAST.

Technology Considered for the Passport Card

The Department of State, in consultation with the DHS, has sought both to ensure the privacy of U.S. citizens' personal information and to facilitate the travel of U.S. citizens in connection with the operational requirements for security and facilitation of travel at especially at land border ports of entry. After reviewing a number of options to provide the CBP officer with appropriate personal information to facilitate the processing of travelers, we believe that the most promising technology is Radio Frequency (RF) technology. This technology utilizes a passive chip deriving its power from the reader that communicates with it. We focused on RF vicinity read (GEN 2) technology and RF proximity read technology.

RF Vicinity Read (GEN–2) Technology

RF vicinity read technology conforms to International Standards Organization (ISO) 18000 6-C specifications. Vicinity read technology would allow the passport card data to be read at a distance of up to 20 feet from the reader. The vicinity read chip would contain only a unique reference number that will serve as a link to information safeguarded in a secure database managed by CBP. In addition to having commercial applications, vicinity-read technology is currently being used in a number of DHS programs. Operationally, it has similarities to CBP land border international trusted traveler programs of NEXUS, SENTRI, and FAST, and DHS's pilot electronic I–94 program currently in place at several land border crossings in that it will only store and transmit a unique reference number and no personal or biographic information. Vicinity read technology is similar to that used in highway toll systems throughout the U.S. From an operational sense, this technology would allow passengers approaching a land crossing in vehicles to present the passport card to the reader easily from within the vehicle and these readers could process information from up to eight cards at one time.

In addition, the use of vicinity technology would provide information to border security personnel further in advance of a traveler's arrival at an inspection booth, facilitate a faster processing of individuals, and provide more opportunities to leverage existing technologies, including programs such as CBP's Trusted Traveler programs NEXUS, FAST, and SENTRI and use of the electronic I–94.

RF Proximity Read Technology

RF proximity read technology conforms to International Standards Organization (ISO) 14443 specifications. In addition to having commercial applications, RF proximity read technology is currently being used in the production of the U.S. ePassport, as well as ePassports of those nations participating in the Visa Waiver Program. The ISO 14443 specification requires the proximity chip to be read within approximately four inches of the reader. Similar to the vicinity RF read technology described above, the RF proximity read chip would contain only a unique reference number to be used as a pointer to a secure database managed by CBP. From an operational sense, this technology would require passengers approaching a land crossing in vehicles to present the passport card in close proximity to the reader outside the vehicle and these readers could process information from a small number of cards at a time.

The Passport Card Technology Selection

DHS selected RF vicinity read technology for its border management system. To ensure compatibility and interoperability with the DHS border management system, and to secure significant travel facilitation advantages, the Department of State proposes to produce the passport card utilizing RF vicinity read technology. The selection of vicinity read technology for the

[4] 22 U.S.C. 212.

[5] 22 U.S.C. 213.

passport card was made in an effort to ensure a seamless operational environment with DHS, and provides the infrastructure support to strengthen our national security at U.S. land borders. The Department of State proposes to produce the card and deliver them with a thin protective sleeve, which is designed to protect the card from unauthorized access. The card could be stored in the sleeve and removed only when needed.

The Department of State solicits comments on the selection of RF vicinity read technology for the passport card.

Obtaining the Passport Card

Both the passport card and the traditional passport book will be issued on the basis of the same documentary requirements: Application forms (DS–11 and DS–82), and adjudication standards for establishing citizenship and identity. Building on existing infrastructure, the Department of State will acquire the capability to produce the passport card, while concurrently increasing capacity to produce traditional passport books.

The U.S. Postal Service (USPS), and other designated local government entities, partner with the Department of State in serving as acceptance agencies for passport applications. Currently there are over 7,500 designated post offices and other passport acceptance facilities nation-wide. Since the passport book and card will be processed using the same infrastructure and same procedures prior to production of the travel document itself, applicants will be able to submit applications for passport cards through the network of passport acceptance agents. The anticipated turn-around time for processing would be the same for both the passport book and card. Citizens outside the U.S. will be able to apply for the passport card at U.S. embassies or consulates abroad; however, all passport cards will be produced in the U.S.

U.S. citizens will be able to hold both a passport card and a traditional passport book concurrently. In addition, applications for a passport book and card can be processed at the same time, using the same form, photograph and supporting documentation. Further, where the application is made for both the passport book and card, only one execution fee will be assessed. Adult applicants with valid passports may apply for passport cards as renewals, using form DS–82 (Passport Applications by Mail), which do not require personal appearance or execution of the passport application form. Details regarding application procedures will be made available at the time the revised passport applications are available. Like other full validity passports, one can apply for the passport card at embassies and consulates abroad. Passport cards applied for abroad will be delivered in the same manner as passport books are delivered abroad. Passport cards will not be issued abroad.

The fee for the passport book and passport card is determined based on a cost of service analysis, consistent with *OMB Circular A–25, User Charges*, to recover the costs of the services when a specific beneficiary can be identified. In March 2006, Consular Affairs contracted with an independent third party to review the last cost of service study for passports (CY 2004), in light of WHTI, and the increase in workload to enable the Department of State to determine several fees including:

- The cost for the new card-format passport, and
- Whether the cost of the passport book could be reduced.

Application Fee for the Passport Card

Based on the recommendation of the independent third party, an application fee of $20.00 is proposed for passport cards issued to adults (age 16 and up), valid for ten years. A fee of $10.00 is proposed for passport cards issued to minors (under age 16), valid for five years. The basis of the passport card application fees is the direct costs of producing passport cards, the card stock, technology, adjudicating the application, printing the biographic information on the card, and priority mail return of the card. Applicants will also be required to pay the execution and expedite fees, if applicable. The execution fee for persons seeking to apply for a passport card and passport book will be $25.

Execution Fee

Certain applicants are required to execute the application DS–11 in the presence of a passport acceptance agent, passport specialist, or consular officer overseas. Therefore, the Department of State separately reviewed the cost factors for the execution of passport applications. By far, the largest number of first time passport applications are made by those who appear in person at local USPS or government offices, most often county clerks or clerks of the court. The fee is retained by these designated passport acceptance facilities to cover their costs of providing this service.

First time adult passport applicants and all minors under age 16 are required to apply in person. Adults applying for replacement passports that have been lost, stolen or mutilated are also required to appear in person, as are those holding expired passports issued more than 15 years previously, or when the bearer was a minor.

The execution fee was set at $30.00 for each application during the last cost of service study. Based on an internal review of our cost of service, and information from the USPS, the Department of State is proposing to reduce the execution fee to $25.00. All fees will be subject to periodic review in the course of the Bureau of Consular Affairs comprehensive cost of service studies to account for operational changes, technological advances and economies of scale.

Application for Both Passport Book and Card

As noted above, a U.S. citizen will be able to apply for both a passport book and passport card in the same application. The execution fee will be assessed only once, although a separate application fee will be assessed for each type of passport.

Regulatory Findings

Administrative Procedure Act

In accordance with provisions of the Administrative Procedure Act governing rules promulgated by federal agencies that affect the public (5 U.S.C. 552), the Department of State is publishing this proposed rule and inviting public comment.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100

million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based companies to compete with foreign-based companies in domestic and import markets.

Executive Order 12866

The Department of State has reviewed this proposed rule to ensure its consistency with the regulatory philosophy and principles set forth in Executive Order 12866. The Department does not consider the proposed rule to be an economically significant regulatory action within the scope of section 3(f)(1) of the Executive Order since it is not likely to have an annual effect on the economy of $100 million or more or to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. However, the proposed rule does have important policy implications. Accordingly, it has been provided to the Office of Management and Budget (OMB) for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Part 22

Passports and visas.

22 CFR Part 51

Administrative practice and procedure, Drug traffic control, Passports and visas, reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 22 CFR Parts 22 and 51 are proposed to be amended as follows:

PART 22—[AMENDED]

1. The authority citation for part 22 continues to read as follows:

Authority: 8 U.S.C. 1153 note, 1351; 10 U.S.C. 2602(c); 22 U.S.C. 214, 2504(a), 4201, 4206, 4215, 4219; 31 U.S.C. 9701; Public Law 105–277, 112 Stat. 2681 *et seq.*; Public Law 108–447; E.O. 10718, 22 FR 4632, 3 CFR, 1954–1958 Comp., p. 382; E.O. 11295, 31 FR 10603, 3 CFR, 1966–1970 Comp., p. 570.

2. Revise § 22.1 to read as follows:

§ 22.1 Schedule of fees.

The following table sets forth the changes to the U.S. Department of State's Schedule of Fees for Consular Services:

SCHEDULE OF FEES FOR CONSULAR SERVICES

Item No.	Fee
Passport and Citizenship Services	
1. Passport Execution: Required for first-time applicants and others who must apply in person [01—Passport Execution]	$25
* * * * * * *	
9. Passport Card Application Services for:	
(a) Applicants age 16 or over (including renewals) [Adult Passport Card]	$20
(b) Applicants under age 16 [Minor Passport Card]	$10
(Item no. 10 vacant.)	
* * * * * * *	

PART 51—PASSPORTS

3. The authority citation for part 51 continues to read as follows:

Authority: 22 U.S.C. 211a, 213, 2651a, 2671(d)(3), 2714 and 3926; 31 U.S.C. 9701; E.O. 11295, 3 CFR, 1966–1970 Comp., p. 570; sec. 236, Public Law 106–113, 113 stat. 1501A–430; 18 U.S.C. 1621 (a)(2).

4. Amend § 51.3 by adding a new paragraph (d) as follows:

§ 51.3 Types of passports.

* * * * *

(d) Passport card. A passport card is valid for departure from and entry to the U.S. through land and sea ports of entry between the U.S. and Mexico, Canada, or the Caribbean and Bermuda. It is not a globally interoperable international travel document.

5. The heading of § 51.4 (b) is revised to read as follows:

§ 51.4 Validity of passports.

* * * * *

(b) Period of validity of a regular passport and a card format passport.

* * *

* * * * *

6. The introductory paragraph of § 51.61 and the first sentence of § 51.61(a) are revised to read as follows:

§ 51.61 Passport fees.

Fees, including execution fees, shall be collected for the following passport services in the amounts prescribed in the Schedule of Fees for Consular Services (22 CFR 22.1)

(a) A fee for each passport application filed, for both book and card format passports, which fee shall vary depending on the age of the applicant.

* * *

* * * * *

Dated: October 6, 2006.

Wanda Nesbitt,

Principal Deputy Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E6–17237 Filed 10–16–06; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1915

[Docket No. S–051A]

RIN 1218–AC16

Updating National Consensus Standards in OSHA's Standard for Fire Protection in Shipyard Employment.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: On September 15, 2004, the Occupational Safety and Health Administration (OSHA) issued a new fire protection final rule for shipyards that incorporated by reference 19 National Fire Protection Association (NFPA) standards. Ten of those NFPA standards had been updated by NFPA since the fire protection rule was proposed and an additional NFPA standard has been updated since the final rule was published. In today's **Federal Register**, OSHA is publishing a direct final rule (DFR) replacing the references to the 11 older NFPA standards in OSHA's fire protection standard for shipyards with their most recent versions.

If OSHA does not receive significant adverse comment on the DFR, the updated versions of the NFPA standards will replace their older versions in OSHA's fire protection standard for shipyards on the effective date stated in the DFR. If significant adverse comment on the updated versions is received, OSHA will withdraw the DFR and proceed with rulemaking on this proposed rule. However, if significant adverse comments are received regarding certain provisions included in the DFR, but not others, OSHA may finalize those changes that did not receive significant adverse comment, and conduct further rulemaking under the proposed rule for the changes that did receive significant adverse comment. A subsequent **Federal Register** document will be published to announce OSHA's action.

DATES: Comments and requests for a hearing on this proposed rule must be submitted by the following dates:

Hard copy: Your comments must be submitted (postmarked or sent) by November 16, 2006. Electronic transmission and facsimile: Your comments must be sent by November 16, 2006.

ADDRESSES: You may submit written comments to this proposed rule—identified by docket number S–051A or RIN number 1218–AC16—by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- OSHA Web site: *http://ecomments.osha.gov*. Follow the instructions for submitting comments on OSHA's Web page.
- Fax: If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693–1648.
- Regular mail, express delivery, hand delivery, and courier service: Submit three copies to the OSHA Docket Office, Docket No. S–051A, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–2625, Washington, DC 20210; telephone (202) 693–2350. (OSHA's TTY number is (877) 889–5627). OSHA Docket Office hours of operation are 8:15 a.m. to 4:45 p.m., EST.

FOR FURTHER INFORMATION: For general information and press inquiries, contact Kevin Ropp, Director, OSHA Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999. For technical inquiries, contact Jim Maddux, Director, Office of Maritime, Directorate of Standards and Guidance, Room N–3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2086 or fax (202) 693–1663. Copies of this **Federal Register** notice are available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1888. Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web page at *http://www.osha.gov*.

For access to the docket to read background documents or comments received, go to: *http://dockets.osha.gov*. Contact the OSHA Docket Office for information about materials not available through the OSHA Web page and for assistance in using the Web page to locate docket submissions.

SUPPLEMENTARY INFORMATION:

I. Background

This proposal applies to shipyard employment. It updates NFPA standards incorporated by reference in the shipyard fire protection standard issued by OSHA on September 15, 2004 by replacing the older versions of NFPA consensus standards with the most current versions (69 FR 55668). A complete discussion of the NFPA standards, a comparison of the older standards and the newer standards, along with the economic analysis, and paperwork and state plan discussions are published in the preamble to the DFR, which is also published in the final rule section of today's **Federal Register**.

II. Public Participation

OSHA requests comments on all issues related to this action. OSHA also welcomes comments on the Agency's findings that there are not negative economic or other regulatory impacts of this action on the regulated community. If OSHA receives no significant adverse comment, OSHA will publish a **Federal Register** document confirming the effective date contained in the companion DFR published in today's **Federal Register** and withdrawing this proposed rule. Such confirmation may include minor stylistic or technical changes to the document. A full discussion of the nature of a significant adverse comment is contained in the companion DFR.

If OSHA receives significant adverse comment on the changes contained in the companion DFR, OSHA will withdraw the DFR and proceed with this proposed rule by addressing comments and publishing a new final rule. If a significant adverse comment is received regarding certain revisions included in the DFR, but not others, OSHA may (1) Finalize those changes that did not receive significant adverse comment, and (2) conduct further rulemaking under this proposed rule for the changes that did receive significant adverse comment.

Comments received will be posted without change to *http://dockets.osha.gov*, including any personal information provided. OSHA cautions you about submitting personal information such as social security numbers and birth dates.

III. List of Subjects for 29 CFR Part 1915

Fire protection, Hazardous substances, Incorporation by reference, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping requirements, Shipyards, and Vessels.

IV. Authority and Signature

This document was prepared under the direction of Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order 5–2002, and 29 CFR part 1911.

Signed at Washington, DC this 5th day of October, 2006.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor.

Proposed Amendments to Standards

OSHA is proposing to amend Part 1915 of Title 29 of the Code of Federal Regulations as set forth below:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for part 1915 continues to read as follows:

Authority: Sec. 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); secs. 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008) as applicable; 29 CFR Part 1911.

2. Amend § 1915.5 to revise paragraphs (d)(4)(i), (vi) through (x), and (xiii) through (xviii) and by removing paragraph (d)(4)(xix) to read as follows:

§ 1915.5 Incorporation by reference.

* * * * *

(d) * * *

(4) * * *

(i) NFPA 1981–2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services, IBR approved for § 1915.505(e)(3)(v).

* * * * *

(vi) NFPA 10–2002 Standard for Portable Fire Extinguishers, IBR approved for §§ 1915.507(b)(1) and (b)(2).

(vii) NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems, IBR approved for §§ 1915.507(b)(2) and (d)(1).

(viii) NFPA 72–2002 National Fire Alarm Code, IBR approved for § 1915.507(c)(6).

(ix) NFPA 13–2002 Standard for the Installation of Sprinkler Systems, IBR approved for § 1915.507(d)(2).

(x) NFPA 750–2003 Standard on Water Mist Fire Protection Systems, IBR approved for § 1915.507(d)(2).

* * * * *

(xiii) NFPA 11–2005 Standard for Low-, Medium-, and High-Expansion Foam, IBR approved for § 1915.507(d)(3).

(xiv) NFPA 17–2002, Standard for Dry Chemical Extinguishing Systems, IBR approved for § 1915.507(d)(4).

(xv) NFPA 12–2005, Standard on Carbon Dioxide Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xvi) NFPA 12A–2004, Standard on Halon 1301 Fire Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xvii) NFPA 2001–2004, Standard on Clean Agent Fire Extinguishing Systems, IBR approved for § 1915.507(d)(5).

(xviii) NFPA 1403–2002, Standard on Live Fire Training Evolutions, IBR approved for § 1915.508(d)(8).

3. Amend § 1915.505 to revise paragraph (e)(3)(v), to read as follows:

§ 1915.505 Fire response.

* * * * *

(e) * * *

(3) * * *

(v) Provide only SCBA that meet the requirements of NFPA 1981–2002 Standard on Open-Circuit Self-Contained Breathing Apparatus for Fire and Emergency Services (incorporated by reference, see § 1915.5); and

* * * * *

4. Amend § 1915.507 to revise paragraphs (b)(1), (b)(2), (c)(6), (d)(1), (d)(2), (d)(3), and (d)(5) to read as follows:

§ 1915.507 Land-side fire protection system.

* * * * *

(b) * * *

(1) The employer must select, install, inspect, maintain, and test all portable fire extinguishers according to NFPA 10–2002 Standard for Portable Fire Extinguishers (incorporated by reference, see § 1915.5).

(2) The employer is permitted to use Class II or Class III hose systems, in accordance with NFPA 10–2002 (incorporated by reference, see § 1915.5), as portable fire extinguishers if the employer selects, installs, inspects, maintains, and tests those systems according to the specific recommendations in NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems (incorporated by reference, see § 1915.5).

(c) * * *

(6) Select, install, inspect, maintain, and test all automatic fire detection systems and emergency alarms according to NFPA 72–2002 National Fire Alarm Code (incorporated by reference, see § 1915.5)

(d) * * *

(1) Standpipe and hose systems according to NFPA 14–2003 Standard for the Installation of Standpipe and Hose Systems (incorporated by reference, see § 1915.5);

(2) Automatic sprinkler systems according to NFPA 25–2002 Standard for the Inspection, Testing, and Maintenance of Water-based Fire Protection Systems, (incorporated by reference, see § 1915.5), and either (i) NFPA 13–2002 Standard for the Installation of Sprinkler Systems (incorporated by reference, see § 1915.5), or (ii) NFPA 750–2003 Standard on Water Mist Fire Protection Systems (incorporated by reference, see § 1915.5);

(3) Fixed extinguishing systems that use water or foam as the extinguishing agent according to NFPA 15–2001 Standard for Water Spray Fixed Systems for Fire Protection (incorporated by reference, see § 1915.5) and either NFPA 11–2005 Standard for Low-, Medium-, and High-Expansion Foam (incorporated by reference, see § 1915.5);

* * * * *

(5) Fixed extinguishing systems using gas as the extinguishing agent according to NFPA 12–2005 Standard on Carbon Dioxide Extinguishing Systems (incorporated by reference, see § 1915.5); NFPA 12A–2004 Standard on Halon 1301 Fire Extinguishing Systems (incorporated by reference, see § 1915.5); and NFPA 2001–2004 Standard on Clean Agent Fire Extinguishing Systems (incorporated by reference, see § 1915.5).

[FR Doc. E6–17125 Filed 10–16–06; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2006–0729; FRL–8231–4]

Revisions to the Arizona State Implementation Plan, Pinal County Air Quality Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of revisions to the Pinal County Air Quality Control District (PCAQCD) portion of the Arizona State Implementation Plan (SIP). These revisions concern particulate matter (PM–10) emissions from fugitive dust. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by *November 16, 2006.*

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2006–0729, by one of the following methods:

1. *Federal eRulemaking Portal*: *www.regulations.gov.* Follow the on-line instructions.

2. *E-mail*: *steckel.andrew@epa.gov.*

3. *Mail or deliver*: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available

online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or e-mail. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.*, copyrighted material), and some may not be publicly available in either location (*e.g.*, CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972–3956, *Donez.Francisco@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action.
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. What are the rule deficiencies?
D. Proposed action and public comment.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by local air agencies and submitted by the Arizona Department of Environmental Quality (ADEQ).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
PCAQCD	4–2–020	General [Fugitive Dust]	6/29/93	11/27/95.
PCAQCD	4–2–030	Definitions [Fugitive Dust]	6/29/93	11/27/95.
PCAQCD	4–2–040	Standards [Fugitive Dust]	6/29/93	11/27/95.
PCAQCD	4–2–050	Monitoring and Records [Fugitive Dust]	5/14/97	10/07/98.

On June 4, 1996, the submittals of rules 4–2–020, 4–2–030, and 4–2–040 were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review. On April 24, 1999, the submittal of rule 4–2–050 was found to meet the completeness criteria.

B. Are there other versions of these rules?

There are no previous versions of Rules 4–2–020, 4–2–030, 4–2–040, or 4–2–050 in the SIP.

C. What is the purpose of the submitted rules?

Particulate matter (PM–10) harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Rules 4–2–020, 4–2–030, 4–2–040, and 4–2–050 establish requirements that help control PM–10 emissions from fugitive dust. EPA's technical support document (TSD) has more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require reasonably available control measures (RACM), including reasonably available control technology (RACT) in moderate PM–10 nonattaiment areas (see section 189(a)), must require best available control measures (BACM), including best available control technology (BACT) in serious PM–10 nonattaiment areas (see section 189(b)), and must not relax existing requirements (see sections 110(l) and 193). A portion of PCAQCD is designated attainment, a portion is designated moderate nonattainment, and a portion is designated serious nonattainment for PM–10.

The following guidance documents were used for reference:

1. Requirements for Preparation, Adoption, and Submittal of Implementation Plans, U.S. EPA, 40 CFR part 51.

2. PM–10 Guideline Document (EPA–452/R–93–008).

B. Do the rules meet the evaluation criteria?

These rules improve the SIP by establishing more stringent emission limits. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What are the rule deficiencies?

These provisions conflict with section 110 and part D of the Act and prevent full approval of the SIP revision.

1. Rule 4–2–020, Section B specifies that Article 4 ''shall not be construed so as to prevent normal farm cultural practices which cause fugitive dust.'' Normal farm cultural practice is defined in Rule 4–2–030, Definition 2, as ''all activities * * * conducted on any facility for the production of crops, livestock, poultry, livestock products or poultry products.'' As written, Rule 4–2–020, Section B effectively exempts agricultural activities from the fugitive dust rules without justification.

2. Rule 4–2–030, Definition 3, defines ''reasonable precaution'' in highly general terms. The term ''reasonable precaution'' is then used in every section of Rule 4–2–040, to define what actions must be taken to mitigate fugitive dust emissions from relevant activities. This general requirement is not sufficiently clear or enforceable.

3. Rule 4–2–050 does not contain recordkeeping provisions. The absence of these provisions makes the all of the submitted rules difficult to enforce.

D. Proposed Action and Public Comment

As authorized in sections 110(k)(3) and 301(a) of the Act, EPA is proposing a limited approval of the submitted

rules to improve the SIP. If finalized, this action would incorporate the submitted rules into the SIP, including those provisions identified as deficient. This approval is limited because EPA is simultaneously proposing a limited disapproval of the rules under section 110(k)(3). If this disapproval is finalized, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the PCAQCD, and EPA's final limited disapproval will not prevent the local agency from enforcing them.

We will accept comments from the public on the proposed limited approval and limited disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled ''Regulatory Planning and Review.''

B. Paperwork Reduction Act

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.*)

C. Regulatory Flexibility Act

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.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* v. *U.S. EPA,* 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 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.'' Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule 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, 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. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, 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. It will not have substantial direct effects on tribal governments, 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. Thus, Executive Order 13175 does not apply to this rule.

EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks

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 does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions that Significantly Affect Energy Supply, Distribution, or Use

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 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use ''voluntary consensus standards'' (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: September 14, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. E6–17233 Filed 10–16–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R01–OAR–2006–0226; FRL–8231–7]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Maine; Redesignation of the Portland, ME and the Hancock, Knox, Lincoln and Waldo Counties, Maine 8-Hour Ozone Nonattainment Areas to Attainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve: A request to redesignate two 8-hour ozone National Ambient Air Quality Standard (NAAQS) nonattainment areas to attainment for the 8-hour ozone NAAQS; and a State Implementation Plan (SIP) revision containing a separate 10-year maintenance plan for each area. The two areas are the Portland, Maine 8-hour ozone nonattainment area and the Hancock, Knox, Lincoln and Waldo Counties (Midcoast), Maine 8-hour ozone nonattainment area. EPA is also providing information on the status of its transportation conformity adequacy determination for the new motor vehicle emissions budgets (MVEBs) for the year 2016 that are contained in the 10-year 8-hour ozone maintenance plans for each area. EPA is proposing to approve MVEBs for both areas.

DATES: Written comments must be received on or before November 16, 2006.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2006–OAR–0226 by one of the following methods:

1. *www.regulations.gov*: Follow the on-line instructions for submitting comments.
2. *E-mail: arnold.anne@epa.gov.*
3. *Fax:* (617) 918–0047.
4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2006–OAR–0226'', Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114–2023.
5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2006–OAR–0226. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *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 through *www.regulations.gov* or e-mail, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114–2023. EPA requests that if at all possible, you contact the

person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Richard P. Burkhart, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, telephone number (617) 918–1664, fax number (617) 918–0664, e-mail *Burkhart.Richard@epa.gov.*

General Information

A. How Can I Get Copies of This Document and Other Related Information?

In addition to the publicly available docket materials available for inspection electronically in the Federal Docket Management System at *www.regulations.gov,* and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section of this **Federal Register**, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the State Air Agency: The Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What is EPA Proposing?
II. What is the Background for These Proposed Actions?
III. What are the Criteria for Redesignation to Attainment?
IV. Why is EPA Taking These Actions?
V. What Would Be the Effect of These Actions?
VI. What is EPA's Analysis of the Portland Redesignation Request?
VII. How are MVEBs Developed and What is an Adequacy Determination?
VIII. What is the Status of EPA's Adequacy Determination for the Portland Area's MVEBs for the Year 2016?
IX. What is EPA's Analysis of the Midcoast Redesignation Request?
X. What is the Status of EPA's Adequacy Determination for the Midcoast Area's MVEBs for the Year 2016?
XI. Proposed Actions on Maine's Redesignation Requests, 175 Maintenance Plans, and Associated MVEBs.
XII. Statutory and Executive Order Reviews.

I. What Is EPA Proposing?

EPA is proposing to take several related actions. EPA is proposing to determine that both the Portland and the Midcoast, Maine 8-hour ozone nonattainment areas have attained the 8-hour ozone standard. EPA is also proposing to approve a request to change the legal designation of the two areas from nonattainment to attainment for the 8-hour ozone National Ambient Air Quality Standards (NAAQS). In addition, EPA is proposing to approve a 10-year maintenance plan for each area and motor vehicle emissions budgets (MVEBs) for each area.

The Portland nonattainment area is located in southern Maine. The Portland nonattainment area consists of 57 coastal towns and cities located in York County (partial), Cumberland County (partial), Sagadahoc County (full) along with Durham, Maine, a town in Androscoggin County. The Portland area is designated as ''marginal'' nonattainment for the 8-hour ozone standard. (See 40 CFR 81.320) The Midcoast area is located north of the Portland area and consists of 55 coastal towns and islands in Hancock, Knox, Lincoln, and Waldo Counties (all are partial Counties), and is designated as ''subpart 1, basic'' for the 8-hour ozone standard. (See 40 CFR 81.320)

II. What Is the Background for These Proposed Actions?

The CAA required EPA to designate as nonattainment any area that was violating the 8-hour ozone NAAQS based on the three most recent years (2001–2003) of air quality data. The **Federal Register** notice making these designations was signed on April 15, 2004, and published on April 30, 2004, (69 FR 23857). The CAA contains two sets of provisions—subpart 1 and subpart 2— that address planning and control requirements for nonattainment areas. (Both are found in Title I, Part D of the CAA.) Subpart 1 (which EPA refers to as ''basic'' nonattainment) contains general, less prescriptive, requirements for nonattainment areas for any pollutant—including ozone—governed by a NAAQS. Subpart 2 (which EPA refers to as ''classified'' nonattainment) provides more specific requirements for ozone nonattainment areas. Some areas are subject only to the provisions of subpart 1. Other areas are also subject to the provisions of subpart 2. Under EPA's 8-hour ozone implementation rule, signed on April 15, 2004, an area was classified under subpart 2 based on its 8-hour ozone design value (i.e., the 3-year average annual fourth-highest daily maximum 8-hour average ozone concentration), if it had a 1-hour design value at or above 0.121 ppm (the lowest 1-hour design value in Table 1 of subpart 2). All other areas are covered under subpart 1, based upon their 8-hour design values. The Portland and Midcoast areas were designated as 8-hour ozone nonattainment areas by EPA on April 30, 2004, (69 FR 23857). The 2004 classification for the Portland 8-hour ozone nonattainment area is based on air quality monitoring data from 2001–2003. The Portland area is classified as marginal. The 2004 classification for the Midcoast 8-hour ozone nonattainment area is also based on air quality monitoring data from 2001–2003. The Midcoast area is classified as subpart 1, basic.

Control requirements are linked to each classification. Areas with more serious ozone pollution are subject to more prescribed requirements. The requirements are designed to bring areas into attainment by their specified attainment dates. The control requirements and dates by which attainment needs to be achieved vary with the area's classification. For example, marginal areas are subject to the fewest mandated control requirements and have the earliest attainment date. Under EPA regulations at 40 CFR part 50, the 8-hour ozone standard is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations is less than or equal to 0.08 ppm (i.e., 0.084 ppm). (See 69 FR 23857 (April 30, 2004) for further information.) The data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90%, and no single year has less than 75% data completeness as determined in Appendix I of 40 CFR part 50.

On August 3, 2006, Maine requested redesignation to attainment for the 8-hour ozone standard for the both areas. The redesignation request includes three years of complete, quality-assured data for the period of 2003 through 2005, indicating the 8-hour NAAQS for ozone had been achieved for the both areas. The data satisfies the CAA requirements when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm. Under the CAA, nonattainment areas may be redesignated to attainment if sufficient complete, quality-assured data is available for the Administrator to determine that the area has attained the standard and the area meets the other CAA redesignation requirements in section 107(d)(3)(E).

III. What Are the Criteria for Redesignation to Attainment?

The CAA provides the requirements for redesignating a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation providing that:

(1) EPA determines that the area has attained the applicable NAAQS;

(2) EPA has fully approved the applicable implementation plan for the area under section 110(k);

(3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(4) EPA has fully approved a maintenance plan for the area as meeting the requirements of section 175A; and,

(5) The state containing such area has met all requirements applicable to the area under section 110 and part D.

EPA provided guidance on redesignation in the General Preamble for the Implementation of Title I of the CAA Amendments of 1990, on April 16, 1992 (57 FR 13498), and supplemented this guidance on April 28, 1992 (57 FR 18070). EPA has provided further guidance on processing redesignation requests in the following documents:

—''Ozone and Carbon Monoxide Design Value Calculations,'' Memorandum from Bill Laxton, June 18, 1990;

—''Maintenance Plans for Redesignation of Ozone and Carbon Monoxide Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, April 30, 1992;

—''Contingency Measures for Ozone and Carbon Monoxide (CO) Redesignations,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, June 1, 1992;

—''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992;

—''State Implementation Plan (SIP) Actions Submitted in Response to Clean Air Act (ACT) Deadlines,'' Memorandum from John Calcagni, Director, Air Quality Management Division, October 28, 1992;

—''Technical Support Documents (TSD's) for Redesignation Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' Memorandum from G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, August 17, 1993;

—''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) On or After November 15, 1992,'' Memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation, September 17, 1993;

—Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, to Air Division Directors, Regions 1–10, ''Use of Actual Emissions in Maintenance Demonstrations for Ozone and CO Nonattainment Areas,'' dated November 30, 1993;

—''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment,'' Memorandum from Mary D. Nichols, Assistant Administrator for Air and Radiation, October 14, 1994; and

—''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard,'' Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, May 10, 1995.

IV. Why Is EPA Taking These Actions?

On August 3, 2006,[1] the state requested redesignation of the both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas to attainment for the 8-hour ozone standard. EPA believes that both areas have attained the standard and have met the requirements for redesignation set forth in section 107(d)(3)(E). EPA is proposing to approve the maintenance plans to fulfill the requirements of section 175(A). EPA is also proposing to approve the MVEB's for these two areas. EPA has previously determined that the 2016 budgets are adequate.

V. What Would Be the Effect of These Actions?

Approval of the redesignation request would change the official designation of both the Portland and the Midcoast, Maine 8-hour ozone nonattainment areas for the 8-hour ozone NAAQS found at 40 CFR 81.320. It would also incorporate into the Maine SIP plans for maintaining the 8-hour ozone NAAQS through 2016, for both areas. The maintenance plans include contingency measures to remedy future violations of the 8-hour NAAQS. In addition MVEBs are established for the year 2016. The MVEBs will be used to assure that plans for the area's transportation system which effect vehicle miles traveled, do not cause motor vehicle emissions in excess of levels consistent with maintaining attainment of the NAAQS.

VI. What Is EPA's Analysis of the Portland Redesignation Request?

EPA is proposing to determine that the Portland nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The basis for EPA's proposed determination is as outlined below.

A. The Portland Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Portland area has attained the 8-hour ozone NAAQS. For ozone, an area is attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. This 3-year average is known as the design value. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in EPA's Air Quality Data System (AQS). The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Maine submitted ozone monitoring data for the April through September ozone season from 2003 to 2005. This data has been quality assured and is recorded in AQS. The data are summarized in Table 1:

[1] The ME DEP submitted the redesignation request on August 3, 2006. The submittal showed evidence of a public hearing, but did not include the public hearing transcript, which was not available at that time. The ME DEP submitted the public transcript on August 30, 2006. The transcript is available in the docket for this action.

TABLE 1.—8-HOUR OZONE (PARTS PER MILLION, PPM) FOR THE PORTLAND AREA

Monitor	County	4th High 8-hr ozone average			3-Year average (design value)
		2003	2004	2005	
Kittery	York	0.080	0.080	0.072	0.077
Kennebunkport	York	0.076	0.076	0.072	0.074
West Buxton	York	0.069	0.075	0.076	0.073
Cape Elizabeth	Cumberland	0.073	0.068	0.073	0.072
Reid State Park	Sagadahoc	0.074	0.069	0.068	0.070
Area Design Value					0.077

The design value for an area is the highest design value recorded at any monitor in the area. Therefore, as shown in Table 1, the design value for the Portland area is 0.077 ppm, which meets the standard as described above. Preliminary ozone data for the summer of 2006 still show the area as being in attainment.

In addition, as discussed below with respect to the maintenance plan, Maine has committed to continue monitoring in these areas in accordance with 40 CFR Part 58. In summary, EPA believes that the data submitted by Maine provides an adequate demonstration that the Portland area has attained the 8-hour ozone NAAQS.

B. The Portland Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) for Purposes of Redesignation

EPA has determined that Maine has met all applicable SIP requirements for the Portland area for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Maine SIP meets applicable SIP requirements for purposes of redesignation under Part D of Title I of the CAA (requirements specific to marginal nonattainment areas, see section 107(d)(3)(E)(v)). In addition, EPA has determined that the Maine SIP is fully approved with respect to all applicable requirements for purposes of redesignation (see section 107(d)(3)(E)(ii)). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation, states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit—Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424 (May 12, 2003).

1. Section 110 General SIP Requirements

Section 110(a)(2) of Title I of the CAA delineates the general requirements for a SIP, which include enforceable emission limitations and other control measures, means, or techniques, provisions for the establishment and operation of appropriate devices necessary to collect data on ambient air quality, and programs to enforce the limitations. General SIP elements and requirements are delineated in section 110(a)(2) of Title I, part A of the CAA. These requirements include, but are not limited to, the following: Submittal of a SIP that has been adopted by the state after reasonable public notice and hearing; provisions for establishment and operation of appropriate procedures needed to monitor ambient air quality; implementation of a source permit program; provisions for the implementation of part C requirement (Prevention of Significant Deterioration (PSD) and provisions for the implementation of part D requirements (New Source Review (NSR) permit programs); provisions for air pollution modeling; and provisions for public and local agency participation in planning and emission control rule development.

Section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state. To implement this provision, EPA has required certain states to establish programs to address transport of air pollutants in accordance with the NO_X SIP call, October 27, 1998 (63 FR 57356), amendments to the NO_X SIP Call, May 14, 1999 (64 FR 26298) and March 2, 2000 (65 FR 11222), and the Clean Air Interstate Rule (CAIR), May 12, 2005 (70 FR 25161). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP submittal requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for purposes of redesignation. In addition, EPA believes that the other section 110 elements not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for purposes of redesignation. The State will still be subject to these requirements after the area is redesignated. The section 110 and part D requirements which are linked with a particular area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. This policy is consistent with EPA's existing conformity and oxygenated fuels requirements, as well as with section 184 ozone transport requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174–53176, October 10, 1996), (62 FR 24826, May 7, 1997); Cleveland–Akron–Lorain, Ohio, final rulemaking (61 FR 20458, May 7, 1996); and Tampa, Florida, final rulemaking at (60 FR 62748, December 7, 1995). See also the discussion on this issue in the Cincinnati redesignation (65

FR 37890, June 19, 2000), and in the Pittsburgh redesignation (66 FR 50399, October 19, 2001).

EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815; March 24, 2006). Therefore EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the Act.

2. Part D Nonattainment Area Requirements under the 8-Hour Standard

The Portland area was designated a marginal nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. For a marginal nonattainment area for the 8-hour standard, such as the Portland area, section 182(a) sets forth requirements. Section 184 also sets forth additional requirements for this area, due to its location within the Ozone Transport Region (OTR).

With respect to the 8-hour standard, EPA has to determined that the Maine SIP meets all applicable SIP requirements under Part D of the CAA, because no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815; March 24, 2006). Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. Subpart 1 of part D, found in sections 172–176 of the CAA, sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 2 of part D, found in section 182 of the CAA, establishes additional specific requirements depending on the area's nonattainment classification.

For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (See also 68 FR 4852–3 in St. Louis NPR for discussion of section 172 requirements.) In addition to the fact that certain Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, new source review requirements, and OTR requirements as not requiring approval prior to redesignation.

Section 176(c) of the CAA requires states to establish criteria and procedures to ensure the federally supported or funded projects conform to the air quality planning goals in the applicable SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under Title 23 U.S.C. and the Federal Transit Act (''transportation conformity'') as well as to all other Federally supported or funded projects (''general conformity''). State conformity revisions must be consistent with Federal conformity regulations relating to consultation, enforcement, and enforceability that the CAA required the EPA to promulgate.

EPA believes it is reasonable to interpret the conformity SIP requirements as not applying for purposes of evaluating the redesignation request under section 107(d) because state conformity rules are still required after redesignation and Federal conformity rules apply where state rules have not been approved. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), upholding this interpretation. See also 60 FR 62748 (December 7, 1995) (Tampa, FL).

Maine has a fully approved NSR program (61 FR 5690; Februrary 14, 1996). Even if Maine did not have a fully approved NSR program, EPA has interpreted the section 184 OTR requirements, including NSR, as not being applicable for purposes of redesignation. The rationale for this is based on two factors. First, the requirement to submit SIP revisions for the section 184 requirements continues to apply to areas in the OTR after redesignation to attainment. Therefore, the State remains obligated to have New Source Review, as well as reasonably available control requirements (RACT) and Vehicle Inspection and Maintenance (I/M) programs even after redesignation. Second, the section 184 control measures are region-wide requirements and do not apply to the area by virtue of its designation and classification. See 61 FR 53174, 53175–53176 (October 10, 1996) and 62 FR 24826, 24830–32 (May 7, 1997). Thus, EPA proposes to find that the Portland area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA's Anti-Backsliding Rules

Prior to its designation as an 8-hour ozone nonattainment area, the Portland area was designated moderate for the 1-hour ozone standard. While, on June 15, 2005, the 1-hour ozone standard was revoked (see 40 CFR 50.9(b)), under EPA's anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area's classification for the 1-hour NAAQS. 40 CFR 51.900 *et seq.*, see also 70 FR 30592, 30604 (May 26, 2005). The applicable Part D 1-hour standard requirements for purposes of redesignation are those that continue to apply under EPA's anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. 40 CFR 51.900 *et seq.*, as amended 70 FR 30592, 30604 (May 26, 2005).

40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

''The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section * * *.'' Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that: ''Applicable Requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment, or unclassifiable.'' For a former 1-hour moderate area, such as Portland, the applicable requirements are as follows:

(1) Reasonably available control technology (RACT);
(2) Inspection and maintenance programs (I/M);
(3) Major source applicability cut-offs for purposes of RACT;
(4) Rate of Progress (ROP) Reductions;
(5) NO_X requirements under section 182(f) of the CAA; and
(6) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

Table 2 lists the control measures, effective in the Portland area. The table shows how the applicable requirements have been met for the Portland area. Thus, EPA believes that Portland has met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard. In addition, Table 2a lists other programs Maine has implemented to address emissions of ozone precursors.

TABLE 2.—CONTROL MEASURES IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
On-board refueling vapor recovery	Federal Rule	Promulgated at 40 CFR part 86.
Federal motor vehicle control program	Federal Rule	Promulgated at 40 CFR part 86.
Federal non-road heavy duty diesel engines	Federal Rule	Promulgated at 40 CFR part 89.
Federal non-road gasoline engines	Federal Rule	Promulgated at 40 CFR part 90.
Automotive refinishing	Federal Rule	Promulgated at 40 CFR part 59, subpart B.
Consumer & commercial products	Federal Rule	Promulgated at 40 CFR part 59, subpart C.
AIM Surface Coatings	Federal Rule	Promulgated at 40 CFR part 59, subpart D.
1990 Base Year Emissions Inventory	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
2002 Base Year Emissions Inventory	Section 182 CAA Requirement.	SIP approved (71 FR 14815; 3/24/06).
1-Hour Emissions Statements	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
5% Reduction Plan in Lieu of 1-Hour Ozone Attainment Demonstration.	Section 182 CAA Requirement.	SIP approved (71 FR 14815, 3/24/06).
15% VOC Reduction Plan	Section 182 CAA Requirement.	SIP approved (71 FR 14815, 3/24/06).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIPs approved (57 FR 3046; 2/13/92), (58 FR 15281; 3/22/93), (59 FR 31154; 6/17/94), (60 FR 33730; 6/29/95).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of CAA.	Section 182 CAA Requirement.	SIPs approved (65 FR 20749; 4/18/00), (67 FR 35439; 5/20/02).
NO_X RACT	Section 182 CAA Requirement.	SIP approved (67 FR 57154; 9/9/02).

TABLE 2A.—NEW SOURCE REVIEW PROGRAM AND OTHER CLEAN AIR ACT PROGRAMS IN THE PORTLAND OZONE NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
New Source Review	CAA Requirement	SIP approved (61 FR 5690; 2/14/96).
Vehicle Inspection and Maintenance Program	Ozone Transport Region Requirement.	SIP approved (66 FR 1871; 1/10/01).
Stage II Vapor Recovery	Ozone Transport Region Requirement.	SIP approved (61 FR 53636; 10/15/96).
Low RVP Gasoline	State Initiative	SIP approved (67 FR 10099; 3/6/02).
Solvent Cleaners	State Initiative	SIP approved (70 FR 30367; 05/26/05).
NO_X Control Program	State Initiative	SIP approved (70 FR 11879; 03/10/05).
Emissions from Smaller-Scale Electric Generating Resources.	State Initiative	SIP approved (70 FR 30373; 05/26/05).
Architectural and Industrial Maintenance (AIM) Coatings	State Initiative	SIP approved (71 FR 13767; 03/17/06).
Control of Emissions of Volatile Organic Compounds from Consumer Products.	State Initiative	SIP approved (70 FR 61382; 10/24/05).
Mobile Equipment Repair and Refinishing	State Initiative	SIP approved (70 FR 30367; 05/26/05).
Portable Fuel Container Spillage Control	State Initiative	SIP approved (70 FR 6352; 02/07/05).

4. The Portland Area has a Fully Approved Applicable SIP for Purposes of Redesignation under Section 110(k) of the CAA

EPA has fully approved the applicable Maine SIP for purposes of redesignation for the Portland area under section 110(k) of the CAA. EPA may rely on prior SIP approvals in approving a redesignation request. Calcagni Memo, p. 3 *Southwestern Pennsylvania Growth Alliance* v. *Browner,* 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Maine has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Portland area under the 1-hour standard (see Table 2).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable

for purposes of redesignation have yet become due, except for the submission of the 2002 base year inventory, which Maine has submitted and EPA has approved (71 FR 14815 (March 24, 2006)), and therefore they need not be approved into SIP prior to redesignation.

C. The Air Quality Improvement in the Portland Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the state has demonstrated that the observed air quality improvement in the Portland area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Maine's SIP control strategy for the Portland area, including rules and the emission reductions achieved as a result of those rules that are enforceable. Several Federal and statewide rules are in place which have improved the ambient air quality in this area. (See Tables 2 and 2a above for a list of control measures and other CAA requirements.) The emission inventories for the Portland area show that between 2002 (the ozone season for which the area was classified) and 2005 (the year the area came into attainment), VOC emissions were reduced by over 10 tons per summer day and NO_X emissions were reduced by over 19 tons per summer day. Ozone precursor emissions were also reduced in upwind states.

The Maine submittal discusses the meteorological data for the years 2003, 2004 and 2005, and for many of the years leading up to 2003. The Maine submittal has numerous graphs and charts of ozone data, ozone precursor data, and meteorological data for the Portland area. These data all support the claim that the downward trend in ozone data is not due to favorable meteorology, but is due to permanent and enforceable reductions in ozone precursor emissions, both within the state and upwind from the state. EPA agrees with Maine's analysis on ozone trends. EPA agrees the downward trend in ozone in Maine has been occurring for several ozone seasons. The meteorology for the Portland area shows that for some of these ozone seasons the summers have been warmer than average, while others have been cooler than average, but the weather over the past several ozone seasons has not been unfavorable to ozone formation. In short, the air quality improvement in the Portland area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal air pollution control regulations and other permanent and enforceable reductions, not favorable meteorology. Therefore, EPA finds this requirement is met for the Portland area.

D. The Portland Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Portland nonattainment area to attainment status, Maine submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Portland area for at least 10 years after redesignation.

1. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

2. What Is EPA's Analysis of the Portland Maintenance Plan?

(a) *Attainment Emissions Inventory*—Maine selected 2005 as the attainment year for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2005 VOC and NO_X emission estimates for the Portland area were developed consistent with EPA guidance and are summarized in Table 3 below. Point source emissions were obtained using 2004 data collected pursuant to Maine's Chapter 137 Emission Statement regulation; projections were made to 2005, 2009, and 2016 using economic-based growth factors. Non-road mobile emissions were calculated using the most recent NONROAD Model. On-road mobile source emissions were calculated using MOBILE 6.2 for 2005, 2009, and 2016. Area source emissions for 2002 were derived from Maine DEP's submittal made to the EPA's national emissions inventory (NEI) for 2002, and modified as described in support material submitted by Maine DEP to EPA. The 2002 area emissions were then projected to 2005, 2009, and 2016.

(b) *Maintenance demonstration*—Maine's August 3, 2006 SIP submittal includes a 10-year maintenance plan for the Portland area as required by section 175A of the Act. This demonstration shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

Maine used 2005 as the base year, 2009 was chosen as the interim year and 2016 is the ''out year,'' which as required, is at least 10 years after the time necessary for EPA to review and approve the maintenance plan. (In addition, per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan. MVEBs are discussed in Section VII below.) Table 3 shows the emissions inventories for 2005, 2009 and 2016, for the Portland area. The emissions inventory shows a downward trend in precursor emissions data from 2005, through 2009 and continuing on until 2016. The decreases in emissions are a requirement of a maintenance plan. Maine has fulfilled this requirement.

TABLE 3.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE PORTLAND NONATTAINMENT AREA (3 COUNTIES) [1]

[All emissions expressed in tons per summer week day]

Category	Subcategory	2005 VOC	2005 NO_X	2009 VOC	2009 NO_X	2016 NO_X	2016 NO_X
Point		4.220	10.480	4.540	11.140	5.350	12.990
Area		41.557	6.301	42.579	6.491	47.331	6.723
Mobile	Onroad [2]	27.033	55.328	20.018	38.849	13.243	19.078
Mobile	Nonroad	20.592	12.020	17.917	10.170	15.560	6.801
Mobile	Locomotives	0.030	0.849	0.027	0.747	0.024	0.620
Total		93.432	84.978	85.081	67.397	81.508	46.212
Change in emissions from 2005				−8.351	−17.581	−11.924	−38.766

[1] The emissions in the table are based on an inventory for three entire counties (Cumberland, Sagadahoc, and York Counties) rather than the somewhat smaller 57 town Portland nonattainment area. EPA believes it is reasonable to use countywide inventories for the purpose of this redesignation demonstration even though the nonattainment area itself includes the 57 towns in these three counties nearest the coast. The Agency concludes that the distribution of emissions for each source category across the counties will generally track population, which is highest along the coast. Therefore, the declining emissions trends reflected in this table for the three entire counties should generally be true for 57 town nonattainment area as well.

[2] To provide a consistent comparison with the other source categories, the mobile onroad inventory numbers are based on an inventory for three entire counties (Cumberland, Sagadahoc and York Counties) and are therefore larger than motor vehicle emissions calculated for the 57 town Portland nonattainment area shown in Table 4.

(c) *Monitoring Network*—There are currently 5 monitors measuring ozone in the Portland area. The State of Maine has committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR Part 58, and has, therefore, addressed the requirement for continued ozone monitoring in this area.

(d) *Verification of Continued Attainment*—The state has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems. To implement the ozone maintenance plan, the state will continue to monitor ozone levels in the area. Maine has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. Maine has committed to do this annually. The update will be based, in part, on the annual update of the NEI, and will indicate new source growth and other changes from the attainment inventory, including changes in vehicle miles traveled or in traffic patterns and changes in MOBILE6.2 or its successor.

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment (see section 175A(d)).

As stated in the Portland area maintenance plan, the Maine DEP has committed to the following procedure. At the conclusion of each ozone season, the Maine DEP will evaluate whether the design value for the Portland area is above or below the 8-hour ozone standard. If the design value is above the standard, the DEP will evaluate the potential causes of this design value increase. The DEP will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, Maine will evaluate the projected in-state emissions for the Portland area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, Maine will implement one or more of the contingency measures listed in this section, or substitute a new VOC or NO_X control measure(s) to achieve additional in-state emissions reductions.

The contingency measures(s) will be selected by the Governor or the Governor's designee within 6 months of the end of the ozone season for which contingency measures have been determined necessary. Possible contingency measures include:

Adhesives

Establish VOC content limits for industrial and commercial application of solvent-based adhesives and sealants based on California Air Resources Board (CARB) suggested RACT controls (1998).

Asphalt Paving

Reduce the VOC content limit for cutback asphalt from 5% to 4%, and lower current VOC content limits for emulsified asphalt by 20%.

Automobile Refinish Coatings

Adopt the VOC content limits contained in the Bay Area Air Quality Management District (BAAQMD) regulations.

Consumer Products

Adopt and implement the July 20, 2005 CARB regulations. These regulations include emission limits for additional consumer product categories that are not included in Maine's existing Chapter 151 consumer products rule.

Rule Effectiveness Improvement

Increase enforcement of existing rules in order to increase rule effectiveness.

Small Source Non-CTG VOC RACT

Reduce the major source and Chapter 134 non-CTG VOC RACT applicability threshold from 40 to 10 tons per year of actual emissions.

The Portland area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory; maintenance demonstration; monitoring network; verification of continued attainment; and a contingency plan. Therefore, EPA believes that the maintenance plan SIP revision submitted by Maine for the Portland area meets the requirements of section 175A of the Act.

VII. How are MVEBs Developed and What is an Adequacy Determination?

Under the CAA, states are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.* reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. Per 40 CFR part 93, a MVEB is established for the last year of the maintenance plan. The MVEB is the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEB serves as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEB in the SIP and revise the MVEB.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*i.e.*, be consistent with) the part of the state's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not ''conform,'' most new projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEB budget contained therein ''adequate'' for use in determining transportation conformity. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by state and federal agencies in determining whether proposed transportation projects ''conform'' to the SIP as required by section 176(c) of the Act. EPA's substantive criteria for determining ''adequacy'' of an MVEB are set out in 40 CFR 93.118(e)(4).

VIII. What is the Status of EPA's Adequacy Determination for the Portland Area's MVEB for the Year 2016?

The Portland area's 10-year maintenance plan submission contains new VOC and NO_X MVEBs for the year 2016, which are shown in Table 4. The availability of the SIP submission with these 2016 MVEBs was announced for public comment on EPA's adequacy web page on August 8, 2006, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2016 MVEBs for the Portland area closed on September 7, 2006. EPA did not receive any adverse comments. EPA New England sent a letter to the Maine Department of Environmental Protection on September 8, 2006, stating that the 2016 MOBILE 6.2 motor vehicle emissions budgets in the August 3, 2006 SIP submittal are adequate.

Additionally, EPA through this rulemaking is proposing to approve those MVEBs for use in determining transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets. The Maine DEP utilized the MOBILE 6.2 model to calculate on-road emissions of VOC and NO_X for the 57 towns in York, Cumberland, Sagadahoc and Androscoggin County comprising the 8-hour nonattainment area. Maine is establishing motor vehicle emissions budgets for the last year of the Portland 8-hour ozone maintenance plan (year 2016) at 16.659 tons per summer weekday (tpswd) of VOC and 32.837 tpswd of NO_X. These on-road mobile source emissions when added to emissions from all other inventory sources (stationary, other mobile (*i.e.*, non-road, marine vessels, airplanes, locomotives) and area sources) result in year 2016 emissions inventories lower than the year 2005 attainment emissions inventory. These emissions budgets, once approved by EPA must be used for future transportation conformity determinations.

TABLE 4.—THE 2016 MVEBS FOR THE PORTLAND 8-HOUR OZONE NONATTAINMENT AREA (57 TOWNS)

[Emissions expressed in tons per summer weekday (tpswd)]

	2005 VOC	2005 NO_X	2016 VOC	2016 O_X
Point	3.669	8.210	4.627	10.118
Area	33.433	5.207	38.118	5.596
Mobile:				
Nonroad	17.401	10.556	13.146	5.545
Locomotives	0.015	0.423	0.013	0.342
Onroad	22.476	46.776	11.032	16.098
Total Inventory	76.994	71.172	66.936	37.699
Total Safety Margin	.....	.....	10.058	33.473
MVEB:				
Onroad	22.476	46.776	11.032	16.098
Plus Safety Margin applied to MVEB	.....	.....	5.627	16.739
Total MVEB	.....	.....	16.659	32.837
Safety Margin Remaining	.....	.....	4.431	16.734

As part of its maintenance plan, Maine elected to apply a portion of its ''safety margin'' to its MVEBs. In this case, a ''safety margin'' is the amount by which the total projected ozone precursor emissions, from all sources (point, area and mobile) are less than the total emissions that would maintain the ozone standard (*i.e.* the difference between 2005 and 2016 precursor emissions, with VOC and NO_X treated separately). The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the Portland area attained the 8-hour ozone NAAQS during the 2003–2005 time period. Maine uses 2005 emissions as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2005 equaled 76.994 tpswd of VOC for the Portland area (see Table 4). Projected VOC emissions from point, area, nonroad, and mobile sources, out to the year 2016, equals 66.936 tpswd of VOC. The SIP demonstrates that the area will continue to maintain the standard with emissions at this level. The safety margin for VOCs is calculated to be the difference between the 2005 VOC emissions (76.994 tpswd) and the 2016 VOC emissions (66.936 tpswd), in this case, 10.058 tpswd is the VOC safety margin for 2016. By this same method, 33.473 tpswd (*i.e.*, 71.172 tpswd less 37.699 tpswd) is the safety margin for NO_X for 2016. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. For the year 2016, the available safety margin (see Table 4) is 10.058 tpswd for VOC and 33.473 tpswd for NO_X. After partial allocation of the safety margin to the MVEB (5.627 tpswd VOC and 16.739 tpswd NO_X), the remaining safety margins are 4.431 tpswd for VOC and 16.734 tpswd for NO_X. Maine has not yet allocated the remaining safety margin to any source category under its maintenance plan, and the State will need to submit a SIP revision to amend its maintenance plan if in the future it decides to use any of the remaining safety margin. The 2016 MVEBs for Portland are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, when added to all other inventory sources, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

IX. What is EPA's Analysis of the Midcoast Redesignation Request?

EPA is also proposing to determine that the Midcoast nonattainment area has attained the 8-hour ozone standard and that all other redesignation criteria have been met. The basis for EPA's proposed determination is as follows.

A. The Midcoast Area Has Attained the 8-Hour Ozone NAAQS

EPA is proposing to determine that the Midcoast area has attained the 8-hour ozone NAAQS. For ozone, an area may be considered to be attaining the 8-hour ozone NAAQS if there are no violations, as determined in accordance with 40 CFR 50.10 and Appendix I, based on three complete, consecutive calendar years of quality-assured air quality monitoring data. To attain this standard, the 3-year average of the fourth-highest daily maximum 8-hour average ozone concentrations measured at each monitor within an area over each year must not exceed 0.08 ppm. This 3-year average is known as the design value. Based on the rounding convention described in 40 CFR part 50, Appendix I, the standard is attained if the design value is 0.084 ppm or below. The data must be collected and quality-assured in accordance with 40 CFR part 58, and recorded in AQS. The monitors generally should have remained at the same location for the duration of the monitoring period required for demonstrating attainment.

Maine submitted ozone monitoring data for the April through September ozone season from 2003 to 2005. This data has been quality assured and is recorded in AQS. The ozone data are summarized in Table 5:

TABLE 5.—8-HOUR OZONE (PARTS PER MILLION, PPM) FOR THE MIDCOAST AREA

Monitor	County	4th High 8-hr ozone average			3-Year Average (design value)
		2003	2004	2005	
Port Clyde	Knox	0.082	0.074	0.075	0.077
McFarland Hill	Hancock	0.080	0.073	0.074	0.075
Cadillac Mountain	Hancock	0.094	0.088	0.082	0.082
Area Design Value					0.082

The design value for an area is the highest design value recorded at any monitor in the area. Therefore, as shown in Table 5, the design value for the Midcoast area is 0.082 ppm, which meets the standard as described above. Preliminary ozone data for the summer of 2006 still show the area as being in attainment.

In addition, as discussed below with respect to the maintenance plan, Maine has committed to continue monitoring in this area in accordance with 40 CFR part 58. In summary, EPA believes that the data submitted by Maine provides an adequate demonstration that the Midcoast area has attained the 8-hour ozone NAAQS.

B. The Midcoast Area Has Met All Applicable Requirements for Purposes of Redesignation Under Section 110 and Part D of the CAA and the Area Has a Fully Approved SIP Under Section 110(k) for Purposes of Redesignation

EPA has determined that Maine has met all applicable SIP requirements for the Midcoast area for purposes of redesignation under section 110 of the CAA (general SIP requirements). EPA has also determined that the Maine SIP meets applicable SIP requirements for purposes of redesignation under Part D of Title I of the CAA (requirements specific to subpart I, basic nonattainment areas, see section 107(d)(3)(E)(v)). In addition, EPA has determined that the SIP is fully approved with respect to all applicable requirements for purposes of redesignation (see section 107(d)(3)(E)(ii)). In making these determinations, EPA ascertained what requirements are applicable to the area and that they are fully approved under section 110(k). SIPs must be fully approved only with respect to applicable requirements.

The September 4, 1992 Calcagni memorandum (see ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' Memorandum from John Calcagni, Director, Air Quality Management Division, September 4, 1992) describes EPA's

interpretation of section 107(d)(3)(E). Under this interpretation, to qualify for redesignation states requesting redesignation to attainment must meet the relevant CAA requirements that come due prior to the submittal of a complete redesignation request. See also Michael Shapiro memorandum, September 17, 1993 and 60 FR 12459, 12465–66 (March 7, 1995) (redesignation of Detroit-Ann Arbor, MI). Applicable requirements of the CAA that come due subsequent to the area's submittal of a complete redesignation request remain applicable until a redesignation is approved, but are not required as a prerequisite to redesignation. Section 175A (c) of the CAA. *Sierra Club* v. *EPA*, 375 F.3d 537 (7th Cir. 2004). See also 68 FR 25424, 25427 (May 12, 2003).

1. Section 110 General SIP Requirements

As explained in more detail in section VI.B.1 above, EPA believes that section 110 elements not linked to the area's nonattainment status are not applicable for purposes of redesignation. Any section 110 requirements that are linked to the Part D requirements for 8-hour ozone nonattainment areas are not yet due, since, as explained below, no Part D requirements applicable for purposes of redesignation under the 8-hour standard became due prior to submission of the redesignation request. Therefore, EPA believes that the State has satisfied the criterion of section 107(d)(3)(E) regarding section 110 of the CAA for the Midcoast redesignation request.

2. Part D Nonattainment Area Requirements Under the 8-Hour Standard

The Midcoast area is designated a subpart 1, basic nonattainment area for the 8-hour ozone standard. Sections 172–176 of the CAA, found in subpart 1 of Part D, set forth the basic nonattainment requirements for all nonattainment areas. Section 182 of the CAA, found in subpart 2 of Part D, establishes additional specific requirements depending on the area's nonattainment classification. EPA has determined that the Maine SIP meets SIP requirements applicable for purposes of redesignation under part D of the Act. Under part D, an area's classification (marginal, moderate, serious, severe, and extreme) indicates the requirements to which it will be subject. For purposes of evaluating this redesignation request, the applicable part D, subpart 1 requirements for all nonattainment areas are contained in section 172(c)(1)–(9). A thorough discussion of the requirements contained in section 172 can be found in the General Preamble for Implementation of Title I (57 FR 13498). (See also 68 FR 4852–3 in St. Louis NPR for discussion of section 172 requirements.)

With respect to the 8-hour standard, EPA proposes to determine that the Maine SIP meets all applicable SIP requirements for purposes of redesignation of the Midcoast area under part D of the CAA since no 8-hour ozone standard Part D requirements applicable for purposes of redesignation became due prior to submission of the area's redesignation request. In addition to the fact that certain Part D requirements applicable for purposes of redesignation did not become due prior to submission of the redesignation request, EPA believes it is reasonable to interpret the conformity, new source review requirements, and OTR requirements as not requiring approval prior to redesignation. (See Section VI.B for a more detailed discussion of this interpretation.) Therefore, EPA proposes to find that the Midcoast area has satisfied all 8-hour ozone standard requirements applicable for purposes of section 107(d)(3)(E) under Part D of the CAA.

3. Part D Nonattainment Area Requirements Under the 1-Hour Standard and EPA's Anti-Backsliding Rules

Prior to its designation as an 8-hour ozone nonattainment area, parts of the Midcoast area were designated maintenance for the 1-hour standard and the rest of the area was designated moderate nonattainment for the 1-hour ozone standard. While, on June 15, 2005, the 1-hour ozone standard was revoked (See 40 CFR 50.9(b)), under EPA's anti-backsliding rules, areas designated nonattainment for the 1-hour standard at the time of the 8-hour ozone designations remained subject to certain control measures that applied by virtue of the area's classification for the 1-hour NAAQS. 40 CFR 51.900 *et seq.*, see also 70 FR 30592, 30604 (May 26, 2005). The applicable Part D 1-hour standard requirements for purposes of redesignation are those that continue to apply under EPA's anti-backsliding rules, which were promulgated in conjunction with the implementation of the 8-hour NAAQS. 40 CFR 51.900 *et seq.*, as amended 70 FR 30592, 30604 (May 26, 2005).

40 CFR 51.905(a)(1) prescribes the 1-hour NAAQS requirements that continue to apply after revocation of the 1-hour NAAQS to former 1-hour ozone nonattainment areas. Section 51.905(a)(1)(i) provides that:

''The area remains subject to the obligation to adopt and implement the applicable requirements as defined in section 51.900(f), except as provided in paragraph (a)(1)(iii) of this section, and except as provided in paragraph (b) of this section * * *.'' Section 51.900(f), as amended by 70 FR 30592, 30604 (May 26, 2005), states that: ''Applicable Requirements means for an area the following requirements to the extent such requirements apply or applied to the area for the area's classification under section 181(a)(1) of the CAA for the 1-hour NAAQS at the time the Administrator signs a final rule designating the area for the 8-hour standard as nonattainment, attainment, or unclassifiable.'' For the Midcoast area, where portions of the area were classified as moderate under the 1-hour standard the applicable requirements for those portions are as follows:

(1) Reasonably available control technology (RACT);

(2) Inspection and maintenance programs (I/M);

(3) Major source applicability cut-offs for purposes of RACT;

(4) Rate of Progress (ROP) Reductions;

(5) NO_X requirements under section 182(f) of the CAA; and

(6) Attainment demonstration or an alternative as provided under § 51.905(a)(1)(ii).

Table 6 lists the control measures effective in the Midcoast area. The table shows how the applicable requirements have been met for the Midcoast area. Thus, EPA believes that Midcoast area has met all applicable Part D requirements under the 1-hour standard for purposes of redesignation under the 8-hour standard. In addition, Table 6a lists other programs Maine has implemented to address emissions of ozone precursors.

TABLE 6.—CONTROL MEASURES IN THE MIDCOAST MAINE OZONE NONATTAINMENT AREA

Name of control measure	Type of measure	Approval status
On-board refueling vapor recovery	Federal Rule	Promulgated at 40 CFR part 86.

TABLE 6.—CONTROL MEASURES IN THE MIDCOAST MAINE OZONE NONATTAINMENT AREA—Continued

Name of control measure	Type of measure	Approval status
Federal motor vehicle control program	Federal Rule	Promulgated at 40 CFR part 86.
Federal non-road heavy duty diesel engines	Federal Rule	Promulgated at 40 CFR part 89.
Federal non-road gasoline engines	Federal Rule	Promulgated at 40 CFR part 90.
Automotive Refinishing	Federal Rule	Promulgated at 40 CFR part 59, subpart B.
Consumer & commercial products	Federal Rule	Promulgated at 40 CFR part 59, subpart C.
AIM Surface Coatings	Federal Rule	Promulgated at 40 CFR part 59, subpart D.
1990 Base Year Emissions Inventory	Section 182 CAA Requirement.	SIP approved (62 FR 9081; 2/28/97).
1 Hour Emissions Statements	Section 182 CAA Requirement.	SIP approved (60 FR 2524; 1/10/95).
Ozone Attainment Demonstration	Section 182 CAA Requirement.	Not required for the portion of the area that was classified as marginal under the 1-hour standard and the requirement was waived do to clean air quality for the portions of the area that was classified as moderate under the 1-hour standard (60 FR 29763; June 6, 1995.
1-hour 15% VOC Rate of Progress Plan	Section 182 CAA Requirement.	Not required for the portion of the area that was classified as marginal under the 1-hour standard and the requirement was waived do to clean air quality for the portions of the area that was classified as moderate under the 1-hour standard (60 FR 29763, June 6, 1995).
VOC RACT pursuant to sections 182(a)(2)(A) and 182(b)(2)(B) of CAA.	Section 182 CAA Requirement.	SIPs approved (57 FR 3046; 2/13/92), (58 FR 15281; 3/22/93), (59 FR 31154; 6/17/94), (60 FR 33730; 6/29/95).
VOC RACT pursuant to sections 182(b)(2)(A) and (C) of CAA.	Section 182 CAA Requirement.	SIP approved (65 FR 20749; 4/18/00), (67 FR 35439; 5/20/02).
NO_X RACT	Section 182 CAA Requirement.	SIP approved (67 FR 57154; 9/9/02).

TABLE 6A.—NEW SOURCE REVIEW PROGRAM AND OTHER CLEAN AIR ACT PROGRAMS IN THE MIDCOAST NONATTAINMENT AREA

Name of measure	Type of measure	Approval status
New Source Review	CAA Requirement	SIP approved (61 FR 5690; 2/14/96).
Low RVP Gasoline applicable in Knox and Lincoln counties.	State Initiative	SIP approved (67 FR 10099; 3/6/02).
Solvent Cleaners	State Initiative	SIP approved (70 FR 30367; 05/26/05).
NO_X Control Program	State Initiative	SIP approved(70 FR 11879; 03/10/05).
Emissions from Smaller-Scale Electric Generating Resources.	State Initiative	SIP approved (70 FR 30373; 05/26/05).
Architectural and Industrial Maintenance (AIM) Coatings	State Initiative	SIP approved (71 FR 13767; 03/17/06).
Control of Emissions of Volatile Organic Compounds from Consumer Products.	State Initiative	SIP approved (70 FR 61382; 10/24/05).
Mobile Equipment Repair and Refinishing	State Initiative	SIP approved (70 FR 30367; 05/26/05).
Portable Fuel Container Spillage Control	State Initiative	SIP approved (70 FR 6352; 02/07/05).

4. The Midcoast Area Has a Fully Approved Applicable SIP for Purposes of Redesignation Under Section 110(k) of the CAA

EPA has fully approved the applicable Maine SIP for purposes of redesignation for the Midcoast area under section 110(k) of the Act. EPA may rely on prior SIP approvals in approving a redesignation request (See Calcagni Memo, p. 3 *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.3d 984, 989–90 (6th Cir. 1998), *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001)), plus any additional measures it may approve in conjunction with a redesignation action. See 68 FR 25426 (May 12, 2003) and citations therein. Following passage of the CAA of 1970, Maine has adopted and submitted and EPA has fully approved at various times provisions addressing the various SIP elements applicable in the Midcoast area under the 1-hour standard (see Table 6 and Table 6a).

As indicated above, EPA believes that the section 110 elements not connected with nonattainment plan submissions and not linked to the area's nonattainment status are not applicable requirements for purposes of redesignation. EPA also believes that no 8-hour Part D requirements applicable for purposes of redesignation of the Midcoast area have yet become due, and therefore they need not be approved into the SIP prior to redesignation.

C. The Air Quality Improvement in the Midcoast Area Is Due to Permanent and Enforceable Reductions in Emissions Resulting From Implementation of the SIP and Applicable Federal Air Pollution Control Regulations and Other Permanent and Enforceable Reductions

EPA believes that the state has demonstrated that the observed air quality improvement in the Midcoast area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP, Federal measures, and other state-adopted measures. EPA approved Maine's SIP control strategy for the Midcoast area, including rules and the emission reductions achieved as a result

of those rules that are enforceable. Several Federal and statewide rules are in place which have improved the ambient air quality in this area. (See Tables 6 and 6a above for a list of control measures and other CAA requirements). The emission inventories in the four counties that comprise the Midcoast area show that between 2002 (the ozone season for which the area was classified) and 2005 (the year they came into attainment), VOC emissions were reduced by over 4 tons per summer day and NO_X emissions were reduced by over 8 tons per summer day. Ozone precursor emissions were also reduced in upwind states.

The Maine submittal discusses the meteorological data for the years 2003, 2004 and 2005, and for many of the years leading up to 2003. The Maine submittal has numerous graphs and charts of ozone data, ozone precursor data, and meteorological data for the Midcoast area. These data all support the claim that the downward trend in ozone data is not due to favorable meteorology, but is due to permanent and enforceable reductions in ozone precursor emissions, both within the state and upwind from the state. EPA agrees with Maine's analysis on ozone trends. EPA agrees the downward trend in ozone in Maine has been occurring for several ozone seasons. The meteorology for the Midcoast area shows that for some of these ozone seasons the summers have been warmer than average, while others have been cooler than average, but the weather over the past several ozone seasons has not been unfavorable to ozone formation. In short, the air quality improvement in the Midcoast area is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable Federal air pollution control regulations and other permanent and enforceable reductions, not favorable meteorology. Therefore, EPA finds this requirement is met for the Midcoast area.

D. The Midcoast Area Has a Fully Approved Maintenance Plan Pursuant to Section 175A of the CAA

In conjunction with its request to redesignate the Midcoast nonattainment area to attainment status, Maine submitted a SIP revision to provide for the maintenance of the 8-hour ozone NAAQS in the Midcoast area for at least 10 years after redesignation.

1. What Is Required in a Maintenance Plan?

Section 175A of the CAA sets forth the elements of maintenance plan for areas seeking redesignation from nonattainment to attainment. Under section 175A, the plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the redesignation, the State must submit a revised maintenance plan which demonstrates that attainment will continue to be maintained for the ten years following the initial ten-year period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency measures, with a schedule for implementation as EPA deems necessary to assure prompt correction of any future 8-hour ozone violations. Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment.

The Calcagni memorandum dated September 4, 1992, provides additional guidance on the content of a maintenance plan. An ozone maintenance plan should address the following provisions:

(a) An attainment emissions inventory;

(b) A maintenance demonstration;

(c) A monitoring network;

(d) Verification of continued attainment; and

(e) A contingency plan.

2. What Is EPA's Analysis of the Midcoast Maintenance Plan?

(a) *Attainment Inventory*—Maine selected 2005 as the attainment year for purposes of demonstrating attainment of the 8-hour ozone NAAQS. The 2005 VOC and NO_X emission estimates for the Midcoast area were developed consistent with EPA guidance and are summarized in Table 7 below. Point source emissions were obtained using 2004 data collected pursuant to Maine's Chapter 137 Emission Statement regulation; projections were made to 2005, 2009, and 2016 using economic based growth factors. Non-road mobile emissions were calculated using the most recent NONROAD model. On-road mobile source emissions were calculated using MOBILE 6.2 for 2005, 2009, and 2016. Area source emissions for 2002 were derived from Maine DEP's submittal made to the EPA's national emissions inventory (NEI) for 2002, and modified as described in support material submitted by Maine DEP to EPA. The 2002 area emissions were then projected to 2005, 2009, and 2016.

(b) *Maintenance demonstration*—Maine's August 3, 2006 SIP submittal includes a 10-year maintenance plan for the Midcoast area as required by section 175A of the Act. This demonstration shows compliance and maintenance of the 8-hour ozone standard by assuring that current and future emissions of VOC and NO_X remain at or below attainment year emission levels. A maintenance demonstration need not be based on modeling. See *Wall* v. *EPA*, 265 F.3d 426 (6th Cir. 2001), *Sierra Club* v. *EPA*, 375 F. 3d 537 (7th Cir. 2004). See also 66 FR 53094, 53099–53100 (October 19, 2001), 68 FR 25430–25432 (May 12, 2003).

Maine used 2005 as the base year, 2009 was chosen as the interim year and 2106 is the ''out year,'' which as required is at least 10 years, after the time necessary for EPA to review and approve the maintenance plan. (In addition per 40 CFR part 93, a MVEB must be established for the last year of the maintenance plan.) MVEBs for the Midcoast area are discussed in Section X below. Table 7 shows the Midcoast area emissions inventories for 2005, 2009 and 2016. The emissions inventory shows a downward trend in precursor emissions data from 2005, through 2009 and continuing on until 2016. The decreases in emissions are a requirement of a maintenance plan. Maine has fulfilled this requirement.

TABLE 7.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE MIDCOAST NONATTAINMENT AREA (4 COUNTIES) [1]

[All emissions expressed in tons per summer weekday (tpswd)]

Category	Subcategory	2005		2009		2016	
		VOC	NO_X	VOC	NO_X	VOC	NO_X
Point		1.520	4.530	1.640	5.360	1.840	6.080

TABLE 7.—ATTAINMENT (2005), INTERIM (2009) AND MAINTENANCE (2016) INVENTORIES FOR THE MIDCOAST NONATTAINMENT AREA (4 COUNTIES) [1]—Continued

[All emissions expressed in tons per summer weekday (tpswd)]

Category	Subcategory	2005		2009		2016	
		VOC	NO_X	VOC	NO_X	VOC	NO_X
Area		14.214	3.659	14.610	3.816	15.989	4.081
Mobile	Onroad [2]	8.664	15.296	6.368	10.731	4.154	5.332
Mobile	Nonroad	13.727	4.713	12.073	4.284	10.217	3.343
Mobile	Locomotives	0.005	0.183	0.005	0.161	0.004	0.135
	Total	38.130	28.381	34.696	24.352	32.204	18.971
	Change in emissions from 2005.			−3.434	−4.029	−5.926	−9.41

[1] The emissions in the table are based on an inventory for four entire counties (Hancock, Knox, Lincoln and Waldo Counties) rather than the somewhat smaller 55 town Midcoast nonattainment area. EPA believes it is reasonable to use countywide inventories for the purpose of this redesignation demonstration even though the nonattainment area itself includes the 55 towns in these four counties nearest the coast. The Agency concludes that the distribution of emissions for each source category across the counties will generally track population, which is highest along the coast. Therefore, the declining emissions trends reflected in this table for the four entire counties should generally be true for 55 town nonattainment area as well.

[2] To provide a consistent comparison with the other source categories, these Mobile Onroad Inventory numbers are based on an inventory for the entire four county area (Hancock, Knox, Lincoln and Waldo Counties) and are, therefore larger than motor vehicle emissions calculated for the 55 Town Midcoast nonattainment area shown in Table 8.

(c) *Monitoring Network*—There are currently three monitors measuring ozone in the Midcoast area. The State of Maine has committed in the maintenance plan to the necessary continued operation of the ozone monitoring network in compliance with 40 CFR part 58, and has, therefore addressed the requirement for continued ozone monitoring in this area.

(d) *Verification of Continued Attainment*—The state has the legal authority to enforce and implement the requirements of the ozone maintenance plan. This includes the authority to adopt, implement and enforce any subsequent emission control contingency measures determined to be necessary to correct future ozone attainment problems. To implement the ozone maintenance plan, the state will continue to monitor ozone levels in the area. Maine has also committed to track the progress of the maintenance demonstration by periodically updating their emission inventory. Maine has committed to do this annually. The update will be based, in part, on the annual update of the NEI, and will indicate new source growth and other changes from the attainment inventory, including changes in vehicle miles traveled or in traffic patterns and changes in MOBILE6.2 or its successor.

(e) *The Maintenance Plan's Contingency Measures*—The contingency plan provisions are designed to promptly correct a violation of the NAAQS that occurs after redesignation. Section 175A of the Act requires that a maintenance plan include such contingency measures as EPA deems necessary to assure that the state will promptly correct a violation of the NAAQS that occurs after redesignation. The maintenance plan should identify the contingency measures to be adopted, a schedule and procedure for adoption and implementation, and a time limit for action by the state. The state should also identify specific indicators to be used to determine when the contingency measures need to be implemented. The maintenance plan must include a requirement that the state will implement all measures with respect to control of the pollutant that were contained in the SIP before redesignation of the area to attainment. Section 175A(d).

As stated in the Midcoast area maintenance plan, the Maine DEP has committed to the following procedure. At the conclusion of each ozone season, the Maine DEP will evaluate whether the design value for the Midcoast area is above or below the 8-hour ozone standard. If the design value is above the standard, the DEP will evaluate the potential causes of this design value increase. The DEP will examine whether this increase is due to an increase in local in-state emissions or an increase in upwind out-of-state emissions. If an increase in in-state emissions is determined to be a contributing factor to the design value increase, Maine will evaluate the projected in-state emissions for the Midcoast area for the ozone season in the following year. If in-state emissions are not expected to satisfactorily decrease in the following ozone season in order to mitigate the violation, Maine will implement one or more of the contingency measures listed in this section, or substitute a new VOC or NO_X control measures to achieve additional in-state emissions reductions.

The contingency measures(s) will be selected by the Governor or the Governor's designee within 6 months of the end of the ozone season for which contingency measures have been determined necessary. Possible contingency measures include:

Adhesives

Establish VOC content limits for industrial and commercial application of solvent-based adhesives and sealants based on California Air Resources Board (CARB) suggested RACT controls (1998).

Asphalt Paving

Reduce the VOC content limit for cutback asphalt from 5% to 4%, and lower current VOC content limits for emulsified asphalt by 20%.

Automobile Refinish Coatings

Adopt the VOC content limits contained in the Bay Area Air Quality Management District (BAAQMD) regulations.

Consumer Products

Adopt and implement the July 20, 2005 California Air Resources Board (CARB) regulations. These regulations include emission limits for additional consumer product categories that are not included in Maine's existing Chapter 151 consumer products rule.

Rule Effectiveness Improvement

Increase enforcement of existing rules in order to increase rule effectiveness.

Small Source Non-CTG VOC RACT

Reduce the major source and Chapter 134 non-CTG VOC RACT applicability threshold from 40 to 10 tons per year of actual emissions.

The Midcoast area maintenance plan adequately addresses the five basic components of a maintenance plan: Attainment inventory; maintenance demonstration; monitoring network; verification of continued attainment; and a contingency plan. Therefore, EPA believes that the maintenance plan SIP revision submitted by Maine for the Midcoast area meets the requirements of section 175A of the Act.

X. What is the Status of EPA's Adequacy Determination for the Midcoast area's MVEB for the Year 2016?

The Midcoast area's 10-year maintenance plan submission contains new VOC and NO_X MVEBs for the year 2016, which are shown in Table 8. The development of MVEBs and adequacy determinations are explained in section VII above. The availability of the SIP submission with these 2016 MVEBs was announced for public comment on EPA's adequacy Web page on August 8, 2006, at: *http://www.epa.gov/otaq/transp/conform/currsips.htm.* The EPA public comment period on adequacy of the 2016 MVEBs for the Midcoast area closed on September 7, 2006. EPA did not receive any adverse comments. EPA New England sent a letter to the Maine Department of Environmental Protection on September 8, 2006, stating that the 2016 MOBILE6.2 motor vehicle emissions budgets in the August 3, 2006 SIP submittal are adequate.

40 CFR 93.118(b)(2) provides that when a maintenance plan has been submitted (as in this redesignation request), motor vehicle emissions must be less than or equal to the motor vehicle emissions budgets established for any other years for which the maintenance plan establishes motor vehicle emissions budgets. The Maine DEP used the MOBILE 6.2 model to calculate on-road VOC and NO_X emissions for the last year (year 2016) of the Midcoast maintenance plan for the 55 towns that make up the Midcoast maintenance area in Hancock, Knox, Lincoln and Waldo Counties. Maine is establishing motor vehicle emissions budgets for the last year of the Midcoast 8-hour ozone maintenance area (year 2016) at 3.763 tons per summer week day of VOC and 6.245 tons per summer week day. These on-road mobile source emissions when added to emissions from all other inventory sources (stationary, other mobile (i.e., non-road, marine vessels, airplanes, locomotives) and area sources) result in year 2016 emissions inventories lower than the year 2005 attainment emissions inventory.

EPA through this rulemaking is proposing to approve these MVEBs for use in determining transportation conformity because EPA has determined that the area maintains the standard with emissions at the levels of the budgets.

TABLE 8.—THE 2016 MVEBS FOR THE MIDCOAST 8-HOUR OZONE NONATTAINMENT AREA (55 TOWNS)

[Emissions expressed in tons per summer day (tpswd)]

	2005		2016	
	VOC	NO_X	VOC	NO_X
Point	1.179	4.300	1.390	5.788
Area	8.568	2.365	9.726	2.619
Mobile:				
Nonroad	8.684	2.689	6.439	1.987
Locomotives	0.009	0.224	0.009	0.191
Onroad	5.131	8.923	2.442	3.103
Total Inventory	23.571	18.501	20.006	13.688
Total Safety Margin			3.565	4.813
MVEB:				
Onroad	5.131	8.923	2.442	3.103
Plus Safety Margin applied to MVEB			1.321	3.142
Total MVEB			3.763	6.245
Safety Margin Remaining			2.244	1.671

As part of the maintenance plan for the Midcoast area, Maine elected to apply a portion of its ''safety margin'' to its MVEBs. In this case, a ''safety margin'' is the amount by which the total projected ozone precursor emissions, from all sources (point area and mobile) are less than the total emissions that would maintain the ozone standard (i.e. the difference between 2005 and 2016 precursor emissions, with VOC and NO_X treated separately). The attainment level of emissions is the level of emissions during one of the years in which the area met the NAAQS. For example, the Midcoast area attained the 8-hour ozone NAAQS during the 2003–2005 time period. Maine uses 2005 emissions as the attainment level of emissions for the area. The emissions from point, area, nonroad, and mobile sources in 2005 equaled 23.571 tpswd of VOC for the Midcoast area (see Table 8). Projected VOC emissions from point, area, nonroad, and mobile sources, out to the year 2016, equals 20.006 tpswd of VOC. The SIP demonstrates that the area will continue to maintain the standard with emissions at this level. The safety margin for VOCs is calculated to be the difference between the 2005 VOC emissions (23.571 tpswd) and the 2016 VOC emissions (20.006 tpswd), in this case, 3.565 tpswd is the VOC safety margin for 2016. By this same method, 4.813 tpswd (i.e., 18.501 tpswd less 13.688 tpswd) is the safety margin for NO_X for 2016. The emissions are projected to maintain the area's air quality consistent with the NAAQS. The safety margin is the extra emissions that can be allocated as long as the total attainment level of emissions is maintained. The credit, or a portion thereof, can be allocated to any of the source categories. For the year 2016, the available safety margin (see Table 8) is

3.565 tpswd for VOC and 4.813 tpswd for NO_X. After partial allocation of the safety margin to the MVEB (1.321 tpswd VOC and 3.142 tpswd NO_X), the remaining safety margins are 2.244 tpswd for VOC and 1.671 tpswd for NO_X. Maine has not yet allocated the remaining safety margin to any source category under its maintenance plan, and the State will need to submit a SIP revision to amend its maintenance plan if in the future it decides to use any of the remaining safety margin. The 2016 MVEBs for Midcoast area are approvable because the MVEBs for NO_X and VOC, including the allocated safety margins, when added to all other inventory sources, continue to maintain the total emissions at or below the attainment year inventory levels as required by the transportation conformity regulations.

XI. Proposed Actions on Maine's Redesignation Requests, 175 Maintenance Plan SIP Revisions, and Associated MVEBs

EPA is proposing to determine that both the Portland, Maine and the Midcoast, Maine, 8-hour ozone nonattainment areas have attained the 8-hour ozone NAAQS. EPA is also proposing to approve the redesignation of both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas from nonattainment to attainment for the 8-hour ozone NAAQS. EPA has evaluated the State of Maine's redesignation requests and determined that they meet the redesignation criteria set forth in section 107(d)(3)(E) of the CAA. EPA believes that the redesignation requests and monitoring data demonstrate that these two areas have attained the 8-hour ozone standard. The final approval of this redesignation request would change the official designation for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas from nonattainment to attainment for the 8-hour ozone standard.

EPA is proposing to approve the maintenance plan SIP revision and the 2016 MVEBs submitted by Maine for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas in conjunction with the corresponding redesignation requests. EPA is proposing to approve the maintenance plan for both the Portland, Maine and the Midcoast, Maine 8-hour ozone nonattainment areas, because they meet the requirements of section 175A as described more fully above.

EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

XII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Redesignation of an area to attainment under section 107(d)(3)(E) of the Clean Air Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any new regulatory requirements on sources. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 proposed 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). This action merely proposes to affect the status of a geographical area, does not impose any new requirements on sources, or allows a state to avoid adopting or implementing other requirements, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed 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. Redesignation is an action that affects the status of a geographical area but does not impose any new requirements on sources. 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 proposed 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

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: October 8, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E6–17226 Filed 10–16–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7676]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA),

Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Alexander County, North Carolina and Incorporated Areas				
Beaver Branch	At the confluence with Lambert Creek	None	+1,087	Unincorporated Areas of Alexander County.
	Approximately 500 feet upstream of SR 1307	None	+1,161	
Big Branch	At the confluence with Elk Shoals Creek	None	+894	Unincorporated Areas of Alexander County.
	Approximately 600 feet upstream of SR 1619	None	+1,057	
Catawba River	Approximately 1.0 mile upstream of the confluence of Elk Shoals Creek.	None	+848	Unincorporated Areas of Alexander County.
	At the Alexander/Caldwell County boundary	None	+936	
Duck Creek	At the confluence of Middle Little River	None	+1,036	Unincorporated Areas of Alexander County.
	At the confluence with Holsclaw Creek	None	+1,157	
Elk Shoals Creek	Approximately 0.5 mile upstream of the confluence with Catawba River.	None	+848	Unincorporated Areas of Alexander County.
	Approximately 400 feet upstream of SR 1631	None	+989	
Tributary 1	At the confluence with Elk Shoals Creek	None	+883	Unincorporated Areas of Alexander County.
	Approximately 0.5 mile upstream of the confluence with Elk Shoals Creek.	None	+896	
Tributary 2	At the confluence with Elk Shoals Creek	None	+889	Unincorporated Areas of Alexander County.
	Approximately 0.5 mile upstream of the confluence of Elk Shoals Creek.	None	+903	
Glade Creek	At the confluence with Lower Little River	None	+901	Unincorporated Areas of Alexander County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 900 feet upstream of Rogers Lake Dam Upper.	None	+1,195	
Tributary 1	At the confluence with Glade Creek	None	+1,015	Unincorporated Areas of Alexander County, Town of Taylorsville.
	Approximately 0.8 mile upstream of SR 1607	None	+1,093	
Grassy Creek	At the confluence with Lower Little River	None	+1,093	Unincorporated Areas of Alexander County.
	Approximately 1,050 feet upstream of the confluence of Grassy Creek Tributary 2.	None	+1,185	
Tributary 1	At the confluence with Grassy Creek	None	+1,098	Unincorporated Areas of Alexander County.
	Approximately 0.7 mile upstream of the confluence with Grassy Creek.	None	+1,122	
Tributary 2	At the confluence with Grassy Creek	None	+1,182	Unincorporated Areas of Alexander County.
	Approximately 0.7 mile upstream of SR 16	None	+1,211	
Guys Branch	At the confluence with Elk Shoals Creek	None	+906	Unincorporated Areas of Alexander County.
	Approximately 0.5 mile upstream of the confluence with Elk Shoals Creek.	None	+922	
Holsclaw Creek	At the confluence with Duck Creek	None	+1,157	Unincorporated Areas of Alexander County.
	Approximately 0.9 mile upstream of SR 1302	None	+1,238	
Isaac Creek	At the confluence with Upper Little River	None	+936	Unincorporated Areas of Alexander County.
	Approximately 0.7 mile upstream of SR 1143	None	+957	
Island Creek	At the confluence with Catawba River	None	+851	Unincorporated Areas of Alexander County.
	Approximately 0.4 mile upstream of SR 1621	None	+875	
Jumping Run	At the confluence with Rock Creek	None	+983	Unincorporated Areas of Alexander County.
	Approximately 600 feet upstream of SR 127	None	+1,099	
Lambert Creek	At the confluence with Lower River	None	+1,087	Unincorporated Areas of Alexander County.
	Approximately 700 feet upstream of confluence of Poplar Creek.	None	+1,180	
Tributary 1	At the confluence with Lambert Creek	None	+1,113	Unincorporated Areas of Alexander County.
	Approximately 800 feet upstream of SR 1307	None	+1,174	
Lower Little River	At the confluence with Catawba River	None	+852	Unincorporated Areas of Alexander County.
	Approximately 0.6 mile upstream of SR 1332	None	+1,130	
Tributary 1	At the confluence with Lower Little River	None	+865	Unincorporated Areas of Alexander County.
	Approximately 1.9 miles upstream of the confluence with Lower Little River.	None	+973	
Tributary 2	At the confluence with Lower Little River	None	+983	Unincorporated Areas of Alexander County.
	Approximately 1,600 feet upstream of SR 1124	None	+1,100	
Tributary 2A	At the confluence with Lower Little River Tributary 2	None	+1,085	Unincorporated Areas of Alexander County.
	Approximately 1,650 feet upstream of the confluence with Lower Little River Tributary 2.	None	+1,122	
Tributary 3	At the confluence with Lower Little River	None	+995	Unincorporated Areas of Alexander County.
	Approximately 1.4 miles upstream of SR 1110	None	+1,093	
Tributary 4	At the confluence with Lower Little River	None	+1,022	Unincorporated Areas of Alexander County, Town of Taylorsville.
	Approximately 1,000 feet upstream of School Drive	None	+1,163	Town of Taylorsville.
Middle Little River	Approximately 300 feet downstream of SR 1137	None	+935	Unincorporated Areas of Alexander County.
	At the Alexander/Caldwell County boundary	None	+1,295	
Tributary 2	At the confluence with Middle Little River	None	+1,030	Unincorporated Areas of Alexander County.
	Approximately 0.7 mile upstream of the confluence with Middle Little River.	None	+1,036	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Mountain Creek	Approximately 0.8 mile upstream of the confluence with Middle Little River.	+935	+936	Unincorporated Areas of Alexander County.
	Approximately 200 feet upstream of SR 1150	None	+1,057	
Muddy Fork Creek	At the confluence with Lower Little River	None	+1,063	Unincorporated Areas of Alexander County, Town of Taylorsville.
	Approximately 1.3 miles upstream of SR 1409	None	+1,108	
Tributary 1	At the confluence with Muddy Fork Creek	None	+1,076	Unincorporated Areas of Alexander County, Town of Taylorsville.
	Approximately 1.6 miles upstream of Old Wikesboro Road.	None	+1,181	Town of Taylorsville
Poplar Creek	At the confluence with Lambert Creek	None	+1,176	Unincorporated Areas of Alexander County.
	Approximately 0.5 mile upstream of SR 1305	None	+1,199	
Rock Creek	At the confluence with Middle Little River	None	+957	Unincorporated Areas of Alexander County.
	At the confluence of Jumping Run	None	+983	
Tributary 1	At the confluence with Rock Creek	None	+957	Unincorporated Areas of Alexander County.
	Approximately 1,000 feet upstream of the confluence with Rock Creek.	None	+958	
Spring Creek	At the confluence with Lower Little River	None	+1,047	Unincorporated Areas of Alexander County.
	Approximately 1.7 miles upstream of SR 1121	None	+1,121	
Stirewalt Creek	At the confluence with Lower Little River	None	+983	Unincorporated Areas of Alexander County.
	Approximately 750 feet upstream of East Main Avenue.	None	+1,241	Town of Taylorsville.
Upper Little River	At the confluence with Catawba River	None	+936	Unincorpoated Areas of Alexander County.
	Approximately 1,600 feet upstream of Alexander/Caldwell County boundary.	None	+971	
White Creek	At the confluence with Holsclaw Creek	None	+1,157	Unincorporated Areas of Alexander County.
	Approximately 0.9 mile upstream of SR 1303	None	+1,270	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Town of Taylorsville:

Maps are available for inspection at the Alexander County Planning and Inspection Office, 332 1st Avenue Southwest, Taylorsville, North Carolina.

Send comments to The Honorable Guy Barriger, Mayor of the Town of Taylorsville, 67 Main Avenue Drive, Taylorsville, North Carolina 28681.

Unincorporated Areas of Alexander County

Maps are available for inspection at the Alexander County Planning and Inspection Office, 332 1st Avenue Southwest, Taylorsville, North Carolina.

Send comments to Mr. Larry Yoder, Chairman of the Alexander County Board of Commissioners, 621 Liledoun Road, Taylorsville, North Carolina 28681.

Avery County, North Carolina and Incorporated Areas

Anthony Creek	Approximately 140 feet upstream of Anthony Creek Road (SR 1362).	None	+1,720	Avery County (Unincorporated Areas).
	Approximately 1,100 feet upstream of Anthony Creek Road (SR 1362).	None	+1,753	
Bill White Creek	At the confluence with Linville River	None	+3,274	Avery County (Unincorporated Areas).
	Approximately 1.2 miles upstream of the confluence with Linville River.	None	+3,331	
Cary Flat Branch	At the confluence with Wilson Creek	None	+2,047	Avery County (Unincorporated Areas).
	Approximately 720 feet upstream of the confluence with Wilson Creek.	None	+2,057	
Clark Branch	At the confluence with Mill Timber Creek	None	+3,325	Avery County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.7 mile upstream of East Crossnore Drive.	None	+3,362	
Crossnore Creek	At the confluence with Mill Timber Creek	None	+3,323	Avery County (Unincorporated Areas), Town of Crossnore.
	Approximately 60 feet downstream of Henson Street	None	+3,408	
Gragg Prong Creek	At the confluence with Lost Cove Creek	None	+1,702	Avery County (Unincorporated Areas).
	Approximately 1,350 feet upstream of the confluence with Webb Creek.	None	+2,199	
Harper Creek	At the Avery/Caldwell County boundary	None	+1,800	Avery County (Unincorporated Areas).
	At the confluence of South Harper and North Harper Creeks.	None	+1,816	
Hull Branch	At the confluence of South Harper Creek	None	+2,279	Avery County (Unincorporated Areas).
	Approximately 450 feet upstream of the confluence with South Harper Creek.	None	+2,285	
Linville River (downstream)	Approximately 0.3 mile downstream of the Avery/Burke County boundary.	None	+3,206	Avery County (Unincorporated Areas).
	Approximately 1.1 miles upstream of River Road	+3,576	+3,573	
Linville River (upstream)	Approximately 50 feet downstream of Highland Mist Road.	None	+3,695	Avery County (Unincorporated Areas).
	At the confluence of Big Grassy Creek	None	+3,834	
Lost Cove Creek	At the Avery/Caldwell County boundary	None	+1,580	Avery County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Gragg Prong Creek.	None	+1,947	
Mill Timber Creek	At the confluence with Linville River	None	+3,315	Avery County (Unincorporated Areas).
	Approximately 150 feet downstream of U.S. 221	None	+3,362	
Rockhouse Creek	At the confluence with Lost Cove Creek	None	+1,580	Avery County (Unincorporated Areas).
	Approximately 0.5 mile upstream of the Avery/Caldwell County boundary.	None	+1,639	
South Harper Creek	At the confluence with Harper Creek	None	+1,816	Avery County (Unincorporated Areas).
	Approximately 320 feet upstream of the confluence of Hull Branch.	None	+2,284	
Stamey Branch	At the confluence with Linville River	None	+3,263	Avery County (Unincorporated Areas).
	Approximately 0.6 mile upstream of the confluence with Linville River.	None	+3,281	
Webb Creek	At the confluence with Gragg Prong Creek		+2,172	Avery County (Unincorporated Areas).
	Approximately 475 feet upstream of Webb Creek Road.	None	+2,396	
West Fork Linville River	Approximately 670 feet upstream of Joe Hartley Road	None	+3,684	Avery County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Joe Hartley Road	None	+3,712	
Wilson Creek	At the Avery/Caldwell County boundary	None	+1,670	Avery County (Unincorporated Areas).
	Approximately 500 feet upstream of the confluence with Cary Flat Branch.	None	+2,056	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Avery County (Unincorporated Areas)

Maps are available for inspection at the Avery County Courthouse, 100 Montezuma Street, Newland, North Carolina.
Send comments to Mr. Kenny Poteat, Chairman of the Avery County Board of Commissioners, P.O. Box 640, Newland, North Carolina 28657.

Burke County, North Carolina and Incorporated Areas

Back Creek	At the confluence with Irish Creek	None	+1,116	Unincorporated Areas of Burke County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of the confluence with Irish Creek.	None	+1,135	
Bailey Fork	Approximately 0.8 mile upstream of I–40	None	+1,036	Unincorporated Areas of Burke County, City of Morganton.
	Approximately 100 feet downstream of U.S. 64	None	+1,047	
Bristol Creek	At the confluence with Lower Creek	None	+1,019	Unincorporated Areas of Burke County.
	Approximately 200 feet downstream of Burke/Caldwell County boundary.	None	+1,144	
Tributary 1	At the confluence with Bristol Creek	None	+1,019	Unincorporated Areas of Burke County.
	Approximately 0.4 mile upstream of the confluence with Bristol Creek.	None	+1,019	
Camp Creek	At Burke/Catawba County boundary	None	+1,020	Unincorporated Areas of Burke County.
	Approximately 800 feet upstream of Burke/Catawba County boundary.	None	+1,023	
Canoe Creek	At the confluence with Catawba River	+1,023	+1,024	Unincorporated Areas of Burke County, City of Morganton.
	Approximately 0.4 mile upstream of SR 1254	None	+1,289	
Carroll Creek	At the confluence with Parks Creek	None	+1,047	Unincorporated Areas of Burke County.
	Approximately 1,700 feet upstream of the confluence with Parks Creek.	None	+1,055	
Catawba River	At the Burke/Catawba County boundary	None	+936	Unincorporated Areas of Burke County, City of Hickory, City of Morganton, Town of Glen Alpine, Town of Rhodhiss, Town of Rutherford College, Town of Valdese.
	Approximately 2.7 miles upstream of Burke/McDowell County boundary.	None	+1,206	
Tributary 1	At the confluence with Catawba River	None	+1,069	Unincorporated Areas of Burke County.
	Approximately 0.5 mile upstream of SR 1223	None	+1,094	
Tributary 2	At the confluence with Catawba River	None	+1,206	Unincorporated Areas of Burke County.
	Approximately 2.8 miles upstream of the confluence with Catawba River.	None	+1,236	
Clear Creek	Approximately 100 feet upstream of the confluence with Silver Creek.	None	+1,046	Unincorporated Areas of Burke County.
	Approximately 400 feet upstream of U.S. 64	None	+1,111	
Cub Creek	At the confluence with Henry Fork	None	+996	Unincorporated Areas of Burke County.
	Approximately 1.0 mile upstream of SR 1001	None	+1,230	
Double Branch	At the confluence with McGalliard Creek	None	+1,097	Unincorporated Areas of Burke County, Town of Valdese.
	Approximately 1,100 feet upstream of SR 1737	None	+1,231	
Tributary 1	At the confluence with Double Branch	None	+1,110	Unincorporated Areas of Burke County.
	Approximately 2,000 feet upstream of SR 1722	None	+1,197	
Douglas Creek	Approximately 100 feet downstream of Burke/Catawba County boundary.	None	+1,046	Unincorporated Areas of Burke County.
	Approximately 1,400 feet upstream of Burke/Catawba County boundary.	None	+1,064	
Drowning Creek	At the confluence with Catawba River	None	+938	Unincorporated Areas of Burke County.
	Approximately 1.7 miles upstream of SR 1758	None	+1,527	
Tributary 1	Approximately 800 feet upstream of Wilson Road	None	+1,025	Town of Hildebran.
	Approximately 1,750 feet upstream of Cline Park Drive.	None	+1,103	
Tributary 2	Approximately 0.4 mile downstream of SR 1680	None	+1,045	Unicorporated Areas of Burke County.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 200 feet downstream of Railroad	None	+1,079	
Tributary 2B	At the confluence with Drowning Creek Tributary 2	None	+1,046	Unincorporated Areas of Burke County.
	Approximately 150 feet downstream of Railroad	None	+1,077	
Hall Creek	At the confluence with Silver Creek	None	1,119	Unincorporated Areas of Burke County.
	Approximately 2,000 feet upstream of U.S. 64	None	+1,203	
Henry Fork	Approximately 200 feet downstream of the Burke/Catawba County boundary.	None	+930	Unincorporated Areas of Burke County.
	Approximately 0.9 mile upstream of SR 1918	None	+1,422	
Howard Creek	At the confluence with Catawba River	None	+1,005	Unincorporated Areas of Burke County, Town of Drexel.
	Approximately 750 feet downstream of SR 1536	None	+1,009	
Tributary 1	Approximately 200 feet upstream of the confluence with Howard Creek.	−1,084	+1,085	Unicorporated Aeas of Burke County, Town of Drexel.
	Approximately 700 feet upstream of Railroad	None	+1,192	
Hoyle Creek	At the conference with Catwaba River	None	+1,005	Unicorporated Areas of Burke County, Town of Rutherford College, town of Valdese.
	Approximately 1,600 feet upstream of the confluence of Micol Creek.	None	+1,081	
Tributary 1	At the confluence with Hoyle Creek	None	+1,005	Unincorporated Areas of Burke County, Town of Rutherford College, Town of Valdese.
	Approximately 0.9 mile upstream of the confluence with Holy Creek.	None	+1,164	
Tributary 2	At the confluence with Hoyle Creek	None	+1,005	Unincorporated Areas of Burke County, Town of Rutherford College, Town of Valdese.
	Approximately 0.7 mile upstream of the confluence with Hoyle Creek.	None	+1,106	
Hunting Creek	At the conference with Catawba River	+1,005	+1,014	Unicorporated Areas of Burke County, City of Morganton.
	Approximately 1,050 feet upsteam of SR 2002	None	+1,149	
Tributary 2	Approximately 650 feet upstream of the confluecne with Hunting Creek.	None	+1,080	Unincorporated Areas of Burke County, City of Morganton.
	Approximately 0.7 mile upstream of Walker Road	None	+1,151	
Tributary 3	At the confluence with Hunting Creek	.....	+1,105	Unicorporated Areas of Burke County City of Morganton.
	Approximately 0.4 mile upstream of the confluence with Hunting Creek.	None	+1,115	
Irish Creek	At the confluence with Warrior Fork and Upper Creek	None	+1,030	Unincorporated Areas of Burke County.
	Approximately 900 feet upsteam of the confluence of Reedys Fork Creek.	None	−1,146	
Tributary 1	At the confluence with Irish Creek	None	+1,108	Unicorporated Areas of Burke County.
	Approximately 50 feet downstream of SR 1240	None	+1,227	
Island Creek	Approximately 1.0 mile upstream of the confluence with Catawba River.	None	+1,005	Unincorporated Areas of Burke County.
	Approximately 0.9 mile upsteam of I–40	None	+1,331	Town of Connelly Springs, Town of Rutherford College.
Jacob Fork	At Burke/Catawba County boundary	None	+1,047	Unincorporated Areas of Burke County.
	Approximately 400 feet upstream of SR 1904	None	+1,194	
Johns River	At the confluence with Catawba River	+1,004	+1,013	Unincorporated Areas of Burke County, City of Morganton.
	At Burke/Caldwell County boundary	None	+1,053	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Laurel Creek	At the confluence with Henry Fork	None	+1,015	Unicorporated Areas of Burke County.
	Approximately 1.2 miles upstream of Shouppe Way	None	+1,302	
Linville River	At the confluence with Catawba River	None	+1,206	Unicorporated Area of Burke County.
	At Avery/Burke County boundary	None	+3,215	
Little Silver Creek	Approximately 0.6 mile upstream of Causby Road (SR 1147).	None	+1,115	Unicorporated Areas of Burke County, City of Morganton, Town of Glen Alpine
	Approximately 1.1 miles upstream of Ceramic Tile Drive.	None	+1,126	
Lower Creek	At the confluence with Catawba River	None	+1,011	Unincorporated Areas of Burke County.
	At Burke/Caldwell County boundary	None	+1,028	
McGalliard Creek	At the confluence with Catawba River	None	+1,005	Unincorporated Areas of Burke County, Town of Valdese.
	Approximately 450 feet upstream of SR 1722	None	+1,212	
Tributary 1	Approximately 300 feet upstream of the confluence with McGalliard Creek.	None	+1,062	Unincorporated Areas of Burke County, Town of Valdese.
	Approximately 1,900 feet upstream of Louise Avenue Northeast.	None	+1,232	
Tributary 2	Approximately 100 feet upstream of the confluence with McGalliard Creek.	None	+1,089	Unincorporated Areas of Burke County, Town of Drexel.
	Approximately 650 feet downstream of I–40	None	+1,250	
Tributary 2A	At the confluence with McGalliard Creek Tributary 2	None	+1,110	Unincorporated Areas of Burke County, Town of Drexel.
	Approximately 800 feet upstream of Drexel Road	None	+1,164	
Tributary 2B	At the confluence with McGalliard Creek Tributary 2	None	+1,149	Unincorporated Areas of Burke County, Town of Drexel.
	Approximately 200 feet downstream of SR 1721	None	+1,205	
Micol Creek	At the confluence with Hoyle Creek	None	+1,068	Unincorporated Areas of Burke County, Town of Valdese.
	Approximately 300 feet downstream of I–40	None	+1,252	
Tributary 1	At the confluence with Micol Creek	None	+1,117	Unincorporated Areas of Burke County, Town of Rutherford College, Town of Valdese.
	Approximately 0.5 mile upstream of Montanya View Drive.	None	+1,526	
Tributary 1A	At the confluence with Micol Creek Tributary 1	None	+1,165	Unincorporated Areas of Burke County, Town of Rutherford College, Town of Valdese.
	Approximately 100 feet downstream of SR 1001	None	+1,229	
Tributary 1A1	At the confluence with Micol Creek Tributary 1A	None	+1,169	Unincorporated Areas of Burke County, Town of Rutherford College.
	Approximately 1,800 feet upstream of Rutherford College Road.	None	+1,229	
Muddy Creek	At the confluence with Old Catawba River	None	+1,083	Unincorporated Areas of Burke County.
	Approximately 0.4 mile upstream of Burke/McDowell County boundary.	None	+1,089	
Nolden Creek	Approximately 1.0 mile upstream of the confluence with Catawba River.	None	+1,004	Unincorporated Areas of Burke County, Town of Connelly Springs.
	Approximately 0.9 mile upstream of SR 1614	None	+1,201	
Old Catawba River	At the confluence with Catawba River	None	+1,066	Unincorporated Areas of Burke County.
	At Catawba Dam	None	+1,098	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Paddy Creek	At the confluence with Catawba River	None	+1,206	Unincorporated Areas of Burke County.
	Approximately 2.9 miles upstream of SR 1237	None	+1,815	
Parks Creek	At the confluence with Johns River	None	+1,044	Unincorporated Areas of Burke County.
	Approximately 100 feet downstream of SR 1405	None	+1,050	
Pearcy Creek	At the confluence with Parks Creek	None	+1,046	Unincorporated Areas of Burke County.
	Approximately 1.1 miles upstream of SR 1405	None	+1,154	
Tributary 1	At the confluence with Pearcy Creek	None	+1,077	Unincorporated Areas of Burke County.
	Approximately 50 feet downstream of SR 1405	None	+1,116	
Reedys Fork Creek	At the confluence with Irish Creek	None	+1,141	Unincorporated Areas of Burke County.
	Approximately 0.5 mile upstream of the confluence with Irish Creek.	None	+1,159	
Roses Creek	At the confluence with Irish Creek	None	+1,057	Unincorporated Areas of Burke County.
	Approximately 0.6 mile upstream of the confluence of Roses Creek Tributary 1.	None	+1,345	
Tributary 1	At the confluence with Roses Creek	None	+1,297	Unincorporated Areas of Burke County.
	Approximately 0.6 mile upstream of the confluence with Roses Creek.	None	+1,382	
Russell Creek	At the confluence with Irish Creek	None	+1,115	Unincorporated Areas of Burke County.
	Approximately 1,550 feet upstream of SR 1241	None	+1,209	
Secrets Creek	Approximately 150 feet upstream of the confluence with Howard Creek.	None	+1,011	Unincorporated Areas of Burke County, Town of Drexel.
	Approximately 0.7 mile upstream of South Main Street.	None	+1,213	
Silver Creek	At the confluence with Catawba River	+1,022	+1,023	Unincorporated Areas of Burke County, City of Morganton.
	Approximately 1,900 feet upstream of U.S. 64	None	+1,226	
Tributary 1	At the confluence with Silver Creek	+1,022	+1,023	City of Morganton.
	Approximately 1,050 feet upstream of Golf Course Road.	None	+1,025	
Simpson Creek	At the confluence with Roses Creek	None	+1,089	Unincorporated Areas of Burke County.
	Approximately 1.5 miles upstream of the confluence with Roses Creek.	None	+1,185	
Smokey Creek	At the confluence with Catawba River	None	+1,006	Unincorporated Areas of Burke County.
	At Burke/Caldwell County boundary	None	+1,100	
Tributary 1	At the confluence with Smokey Creek	None	+1,043	Unincorporated Areas of Burke County.
	Approximately 0.4 mile upstream of the confluence with Smokey Creek.	None	+1,079	
South Muddy Creek	Approximately 1,200 feet downstream of Burke/McDowell County boundary.	None	+1,092	Unincorporated Areas of Burke County.
	At Burke/McDowell County boundary	None	+1,098	
Tributary 1	At Burke/McDowell County boundary	None	+1,121	Unincorporated Areas of Burke County.
	Approximately 1,000 feet upstream of Burke/McDowell County boundary.	None	+1,144	
Tims Creek	At the confluence with Henry Fork	None	+977	Unincorporated Areas of Burke County.
	Approximately 1.6 miles upstream of SR 1786	None	+1,234	
Upper Creek	At the confluence with Warrior Fork and Irish Creek	None	+1,030	Unincorporated Areas of Burke County.
	Approximately 0.5 mile upstream of SR 1405	None	+1,093	
Warrior Fork	At the confluence with Catawba River	+1,013	+1,018	Unincorporated Areas of Burke County, City of Morganton.
	At the confluence of Upper Creek and Irish Creek	None	+1,030	

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). +Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Wilson Creek	At the confluence with Warrior Fork	+1,013	+1,018	Unincorporated Areas of Burke County, City of Morganton.
	Approximately 0.7 mile upstream of the confluence with Warrior Fork.	+1,017	+1,018	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Hickory

Maps are available for inspection at the Hickory City Hall, 76 North Center Street, Hickory, North Carolina.
Send comments to The Honorable G. Rudy Wright, Jr., Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603.

City of Morganton

Maps are available for inspection at the Morganton Town Hall, Community Development Department, 305 East Union Street, Morganton, North Carolina.
Send comments to The Honorable Mel Cohen, Mayor of the City of Morganton, P.O. Box 3448, Morganton, North Carolina 28680–3448.

Town of Connelly Springs

Maps are available for inspection at the Connelly Springs Town Hall, 1030 U.S. Highway 70, Connelly Springs, North Carolina.
Send comments to The Honorable Carl Greene, Mayor of the Town of Connelly Springs, P.O. Box 99, Connelly Springs, North Carolina 28612.

Town of Drexel

Maps are available for inspection at the Drexel Town Hall, 202 Church Street, Drexel, North Carolina.
Send comments to The Honorable Richard E. Propst, Mayor of the Town of Drexel, P.O. Box 1087, Drexel, North Carolina 28619.

Town of Glen Alpine

Maps are available for inspection at the Glen Alpine Town Hall, 103 Pitts Street, Glen Alpine, North Carolina.
Send comments to The Honorable Christine Abernathy, Mayor of the Town of Glen Alpine, P.O. Box 898, Glen Alpine, North Carolina 28628.

Town of Hildebran

Maps are available for inspection at the Hildebran Town Hall, 202 South Center Street, Hildebran, North Carolina.
Send comments to The Honorable Albert L. Parkhurst, Mayor of the Town of Hildebran, P.O. Box 87, Hildebran, North Carolina 28637.

Town of Rhodhiss

Maps are available for inspection at the Rhodhiss Town Hall, 200 Burke Street, Rhodhiss, North Carolina.
Send comments to The Honorable Jimmy Wilson, Mayor of the Town of Rhodhiss, P.O. Box 40, Rhodhiss, North Carolina 28667.

Town of Rutherford College

Maps are available for inspection at the Rutherford College Town Hall, 950 Malcolm Boulevard, Rutherford College, North Carolina.
Send comments to The Honorable Jim Hoffman, Sr., Mayor of the Town of Rutherford College, P.O. Box 406, Rutherford College, North Carolina 28671.

Town of Valdese

Maps are available for inspection at the Valdese Town Hall, 121 Faet Street, Valdese, North Carolina.
Send comments to The Honorable James Hatley, Mayor of the Town of Valdese, P.O. Box 339, Valdese, North Carolina 28690.

Unincorporated Areas of Burke County

Maps are available for inspection at the Burke County Planning and Development Department, 110 North Green Street, Morganton, North Carolina.
Send comments to Mr. Ron Lewis, Burke County Manager, P.O. Box 219, Morganton, North Carolina 28680.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17254 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–P–7917]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above-ground. + Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
City of Hamilton, Hancock County, Illinois					
Illinois	Hamilton (City) (Hancock County).	Chaney Creek Tributary 1	Approximately 190 feet upstream of the confluence with Chaney Creek.	None	*532
			Approximately 1,155 feet upstream of Park Drive.	None	*605
		Chaney Creek Tributary	At the confluence with Chaney Creek Tributary 1.	None	*580
			Approximately 20 feet upstream of Hillcrest Drive.	None	*616
		Railroad Creek Tributary 1	Approximately 215 feet upstream of the confluence with Railroad Creek.	None	*558
			Approximately 30 feet upstream of Walnut Street.	None	*612
		Railroad Creek Tributary 2	Approximately 345 feet upstream of the confluence with Railroad Creek.	None	*588
			Approximately 435 feet upstream of Broadway Street.	None	*645
		Railroad Creek Tributary 3	Approximately 200 feet upstream of the confluence with Railroad Creek.	None	*575
			Approximately 60 feet upstream of South 19th Street.	None	*635
		Spring Creek	Approximately 460 feet upstream of the confluence with Chaney Creek.	None	*561
			Approximately 1,975 feet upstream of the confluence with Chaney Creek.	None	*611

* National Geodetic Vertical Datum
# Depth in feet above ground
+ North American Vertical Datum

ADDRESSES

Maps are available for inspection at the Community Map Repository, City of Hamilton, City Hall, 1010 Broadway, Hamilton, Illinois.

State	City/town/county	Source of flooding	Location	# Depth in feet above-ground. + Elevation in feet (NGVD) *Elevation in feet (NAVD)	
				Existing	Modified
Send comments to The Honorable Steve Woodruff, Mayor, City of Hamilton, City Hall,1010 Broadway, Hamilton, Illinois 62341–1535.					
Unincorporated Areas of Hancock County, Illinois					
Illinois	Hancock County (Unincorporated Areas).	Chaney Creek Tributary 1	Approximately 70 feet upstream of the confluence with Chaney Creek.	None	+529
			Approximately 370 feet upstream of the confluence with Chaney Creek.	None	+536
		Railroad Creek Tributary 3	Approximately 2,970 feet upstream of the confluence with Railroad Creek.	None	+636
			Approximately 3,170 feet upstream of the confluence with Railroad Creek.	None	+636
		Spring Creek	Approximately 70 feet upstream of the confluence with Chaney Creek.	None	+536
			Approximately 460 feet upstream of the confluence with Chaney Creek.	None	+561

* National Geodetic Vertical Datum
# Depth in feet above ground
+ North American Vertical Datum

ADDRESSES

Maps are available for inspection at the Community Map Repository, Hancock County Courthouse, 500 Main Street, Carthage, Illinois.
Send comments to The Honorable David Walker, Board Chairman, Hancock County, 235 North Washington, Carthage, Illinois 62321.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17256 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7465]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Benton County, Arkansas and Incorporated Areas				
Little Osage Creek	Approximately 500 feet upstream from the intersection with West Fish Hatchery Road.	None	+1258	City of Centerton.
	Approximately 100 feet upstream from the intersection with Centerton Blvd.	None	+1278	
McKisic Creek	At Confluence with Little Sugar Creek	None	+1037	Benton County (Unincorporated Areas), City of Bentonville, City of Centerton.
	Approximately 300 feet upstream from the intersection of Harvest Street and Tyler Street.	None	+1291	
Osage Tributary 1	Approximately 1000 feet downstream from the intersection with Stoney Brook Road.	+1196	+1197	Benton County (Unincorporated Areas), City of Bentonville, City of Rogers.
	Approximately 100 feet upstream from the intersection with 14th Street.	+1300	+1302	
Osage/Turtle Creek	Approximately 500 feet downstream from the intersection of Inglewood Road and Osage Creek Road.	+1159	+1160	Benton County (Unincorporated Areas), City of Cave Springs, City of Rogers.
	Approximately 200 feet downstream from the intersection of West Persimmon Street and North 4th Street.	None	+1347	
Tributary 3 to Sager Creek	Approximately 1000 feet downstream from the intersection with Orchard Hill Road.	+1040	+1042	Benton County (Unincorporated Areas), City of Siloam.
	Approximately 150 feet upstream from the intersection with North Mt. Olive Street.	+1086	+1087	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

City of Bentonville

Maps are available for inspection at 305 Southwest A Street, Bentonville, AR 72712.
Send comments to the Honorable Terry Coberly, Mayor, City of Bentonville, 117 West Central Street, Bentonville, AR 72712.

City of Cave Springs

Maps are available for inspection at 137 N. Main, Cave Springs, AR 72718.
Send comments to the Honorable Thekla Wallis, Mayor, City of Cave Springs, 137 N. Main, Cave Springs, AR 72718.

City of Centerton

Maps are available for inspection at 290 Main Street, Centerton, AR 72719.
Send comments to the Honorable Ken Williams, Mayor, City of Centerton, P.O. Box 208, Centerton, AR 72719.

City of Rogers

Maps are available for inspection at 207 South 2nd, Rogers, AR 72756.
Send comments to the Honorable Steve Womack, Mayor, City of Rogers, 300 West Poplar, Rogers, AR 72756.

City of Siloam Springs

Maps are available for inspection at 400 North Broadway, Siloam Springs, AR 72761.
Send comments to the Honorable M.L. Van Poucke, Jr., Mayor, City of Siloam Springs, 400 North Broadway, Siloam Springs, AR 72761.

Unincorporated Areas of Benton County

Maps are available for inspection at 905 Northwest 8th Street, Bentonville, AR 72712.
Send comments to the Honorable Gary Black, Judge, Benton County, 905 Northwest 8th Street, Bentonville, AR 72712.

Town of Vinalhaven, Knox County, Maine				
Atlantic Ocean	At Crockett Cove	None	+10	Town of Vinalhaven.
	At Carvers Pond	None	+10	
	At Old Harbor, Northern Shore	None	+11	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
	At Eastern Shore of Carvers Harbor	None	+11	
	At Northern end of Carvers Harbor	None	+12	
	At Coombs Neck, Northern Shore	None	+13	
	At Sand Cove	None	+14	
	At Clam Cove of Roberts Harbor	None	+16	
	At Southern point of Vinalhaven Island opposite Carvers Island.	None	+18	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps are available for inspection at the Town of Vinalhaven, Town Office, West Main, Vinalhaven, Maine 04863.
Send comments to The Honorable James Moore, Chairman, 19 Washington School Road, Vinalhaven, Maine 04863.

Caswell County, North Carolina and Incorporated Areas

Benton Branch	At the confluence with Stony Creek	None	+603	Caswell County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Senior Alfred Road.	None	+680	
Tributary 1	At the confluence with Benton Branch	None	+619	Caswell County (Unincorporated Areas).
	Approximately 1.7 miles upstream of the confluence with Benton Branch.	None	+707	
Tributary 2	At the confluence with Benton Branch	None	+634	Caswell County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Simmons Road	None	+725	
Grays Branch	At the confluence with Stony Creek	None	+618	Caswell County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Shaw Road	None	+738	
Tributary 1	At the confluence with Grays Branch	None	+623	Caswell County (Unincorporated Areas).
	Approximately 2.1 miles upstream of the confluence with Grays Branch.	None	+724	
Tributary 2	At the confluence with Grays Branch	None	+641	Caswell County (Unincorporated Areas).
	Approximately 2.9 miles upstream of Underwood Road.	None	+754	
Hughes Mill Creek	Approximately 0.5 mile upstream of the confluence with Jordan Creek.	None	+610	Caswell County (Unincorporated Areas).
	Approximately 1.2 miles upstream of North Carolina Highway 62.	None	+657	
Stony Creek	Approximately 0.3 mile downstream of the Caswell/Alamance County boundary.	None	+595	Caswell County (Unincorporated Areas).
	Approximately 2.4 miles upstream of Moore Road	None	+712	
Toms Creek	At the Caswell/Alamance County boundary	None	+596	Caswell County (Unincorporated Areas).
	Approximately 0.6 mile upstream of Kerr's Chapel Road.	None	+637	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Caswell County (Unincorporated Areas)

Maps available for inspection at the Caswell County Planning Department, 144 Courthouse Square, Yancyville, North Carolina.
Send comments to Mr. Nathaniel Hall, Chairman of the Caswell County Commissioners, P.O. Box 98, Yancyville, North Carolina 27379.

Guilford County, North Carolina and Incorporated Areas

East Belews Creek Tributary 1.	At the Guilford/Forsyth County boundary	None	+733	Town of Stokesdale.
	Approximately 1.2 miles upstream of Coldwater Road	None	+786	
Tributary 1A	At the Guilford/Forsyth County boundary	None	+733	Town of Stokesdale.
	Approximately 680 feet upstream of Coldwater Road	None	+758	
Tributary 2	At the Guilford/Forsyth County boundary	None	+750	Guilford County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Water Oak Road	None	+776	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Kennedy Mill Creek	At the Guilford/Davidson County boundary	None	+801	City of High Point.
	Approximately 900 feet upstream of Hodgin Street	None	+848	
Tributary 1	At the Guilford/Davidson County boundary	None	+815	City of High Point.
	Approximately 0.3 mile upstream of Woodbine Street	None	+903	
Tributary 1A	At the confluence of Kennedy Mill Creek Tributary 1	None	+816	City of High Point.
	Approximately 0.3 mile upstream of the confluence with Kennedy Mill Creek Tributary 1.	None	+839	
Kings Creek	At the Guilford/Forsyth County boundary	None	+724	Guilford County (Unincorporated Areas), Town of Stokesdale.
	Approximately 1.4 miles upstream of Anthony Road	None	+815	
Payne Creek	At the confluence of Payne Creek Tributary 2	None	+826	City of High Point.
	Approximately 130 feet upstream of Council Street	None	+858	
Tributary 1 (Stream No. 99).	At State Route 68	None	+826	City of High Point.
	Approximately 170 feet upstream of West Rotary Drive.	None	+868	
Tributary 1A (Stream No. 97).	Approximately 100 feet upstream of State Route 68	None	+822	City of High Point.
	Approximately 800 feet upstream of Carr Street	None	+863	
Tributary 1B	Approximately 50 feet upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	None	+807	City of High Point.
	Approximately 0.2 mile upstream of the confluence with Payne Creek.	None	+834	
Tributary 1C	Approximately 200 feet upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	None	+810	City of High Point.
	Approximately 0.3 mile upstream of the confluence with Payne Creek Tributary 1 (Stream No. 99).	None	+839	
Tributary 2	At the confluence with Payne Creek	None	+826	City of High Point.
	Approximately 460 feet upstream of North Rotary Drive.	None	+868	
Rich Fork Tributary 1 (Stream No. 92).	Approximately 100 feet upstream of the confluence of Rich Fork Tributary 1B (Stream No. 93).	None	+791	City of High Point.
	Approximately 950 feet upstream of Greenwood Drive.	None	+846	
Tributary 1 B1	Approximately 100 feet upstream of the confluence with Rich Fork Tributary 1B (Stream No. 93).	None	+822	City of High Point.
	Approximately 375 feet upstream of Idol Street	None	+858	
Tributary 1A	Approximately 100 feet downstream of Carolyndon Drive.	+780	+781	City of High Point.
	Approximately 600 feet upstream of Westover Drive	None	+853	
Tributary 2	At the Guilford/Davidson County boundary	None	+807	City of High Point.
	Approximately 0.3 mile upstream of the Guilford/Davidson County boundary.	None	+827	
Rich Fork Tributary 1B (Stream No. 93).	Approximately 50 feet upstream of State Route 68	None	+833	City of High Point.
	Approximately 400 feet upstream of Pinehurst Drive	None	+833	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

City of High Point

Maps available for inspection at the High Point City Hall, 211 South Hamilton Street, High Point, North Carolina.
Send comments to The Honorable Rebecca Smothers, Mayor of the City of High Point, P.O. Box 230, High Point, North Carolina 27261.

Town of Stokesdale

Maps available for inspection at the Stokesdale Town Hall, 8416 U.S. Highway 158, Stokesdale, North Carolina.
Send comments to The Honorable Randle L. Jones, Mayor of the Town of Stokesdale, P.O. Box 465, Stokesdale, North Carolina 27357.

Unincorporated Areas of Guilford County

Maps available for inspection at the Guilford County Planning and Development Office, 201 South Eugene Street, Greensboro, North Carolina.
Send comments to Mr. Willie Best, Guilford County Manager, P.O. Box 3427, Greensboro, North Carolina 27402.

Halifax County, North Carolina and Incorporated Areas

Bells Branch	At the confluence with Chockoyotte Creek	+117	+116	City of Roanoke Rapids.
	Approximately 850 feet upstream of the confluence with Chockoyotte Creek.	+117	+116	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Bens Creek	Approximately 1.5 miles upstream of the Halifax/Warren County boundary.	None	+199	Unincorporated Areas of Halifax County.
Chockoyotte Creek	At the confluence with Roanoke River	+56	+57	Unincorporated Areas of Halifax County, City of Roanoke Rapids.
	Approximately 2.0 miles upstream of Zoo Road	None	+202	Town of Weldon.
Chockoyotte Creek Tributary	At the confluence with Chockoyotte Creek	+83	+79	Town of Weldon, City of Roanoke Rapids, Unincorporated Areas of Halifax County.
	Approximately 30 feet downstream of County Road	+88	+87	
Tributary A	At the confluence with Chockoyotte Creek	+92	+94	Unincorporated Areas of Halifax County, City of Roanoke Rapids.
	Approximately 1,490 feet upstream of American Legion Road.	None	+135	
Tributary B	At the confluence with Chockoyotte Creek	+112	+114	City of Roanoke Rapids.
	At the downstream side of Julian R. Allsbrook Highway.	None	+127	
Conoconnara Swamp	At the confluence with Roanoke River	+41	+43	Unincorporated Areas of Halifax County.
	Approximately 1,000 feet upstream of NC–481	None	+80	
Tributary 1	At the confluence with Conoconnara Swamp	None	+58	Unincorporated Areas of Halifax County.
	Approximately 3.5 miles upstream of the confluence with Conoconnara Swamp.	None	+67	
Tributary 2	At the confluence with Conoconnara Swamp	None	+72	Unincorporated Areas of Halifax County.
	Approximately 0.7 mile upstream of the confluence with Conoconnara Swamp.	None	+78	
Tributary 2A	At the confluence with Conoconnara Swamp Tributary 2.	None	+77	Unincorporated Areas of Halifax County.
	Approximately 0.8 mile upstream of the confluence with Conoconnara Swamp.	None	+85	
Deep Creek (into Roanoke River).	Approximately 0.7 mile downstream of Thema Road (SR 1400).	None	+133	Unincorporated Areas of Halifax County.
	Approximately 80 feet downstream of Roper Springs Road (SR 1525).	None	+189	
Tributary 1	At the confluence with Deep Creek (into Roanoke River).	None	+136	Unincorporated Areas of Halifax County.
	Approximately 0.4 mile upstream of the confluence with Deep Creek (into Roanoke River).	None	+151	
Tributary 2	At the confluence with Deep Creek (into Roanoke River).	None	+146	Unincorporated Areas of Halifax County.
	Approximately 1,375 feet upstream of the confluence with Deep Creek (into Roanoke River) Tributary 2A.	None	+162	
Tributary 2A	At the confluence with Deep Creek (into Roanoke River) Tributary 2.	None	+146	Unincorporated Areas of Halifax County.
	Approximately 1,300 feet upstream of the confluence with deep Creek (into Roanoke River) Tributary 2.	None	+159	
Tributary 4	At the confluence with Deep Creek into Roanoke River).	None	+175	Unincorporated Areas of Halifax County.
	Approximately 0.5 mile upstream of the confluence with Deep Creek (into Roanoke River).	None	+181	
Tributary 3	At the confluence with Deep Creek (into Roanoke River).	None	+154	Unincorporated Areas of Halifax County.
	Approximately 1,700 feet upstream of the confluence with Deep Creek (into Roanoke River).	None	+163	
Hales Branch	At the upstream side of Zoo Road	None	+215	Unincorporated Areas of Halifax County.
	Approximately 1,200 feet upstream of Zoo Road	None	+227	
Hales Mill Pond Branch	At the confluence with Conoconnara Swamp	None	+67	Unincorporated Areas of Halifax County.
	Approximately 300 feet upstream of Old 125 Road (SR 1103).	None	+73	
Keehukee Swamp	At the confluence with Roanoke River	None	+28	Unincorporated Areas of Halifax County.
≤	Approximately 250 feet downstream of Railroad	None	+61	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 1	At the confluence with Keehukee Swamp	None	+28	Unincorporated Areas of Halifax County.
	Approximately 1,650 feet upstream of the confluence with Keehukee Swamp.	None	+28	
Tributary 2	Approximately 2.1 miles upstream of the confluence with Keehukee Swamp.	None	+27	Unincorporated Areas of Halifax County.
	At the confluence with Keehukee Swamp	None	+29	
Little Quankey Creek	Approximately 750 feet upstream of Interstate 95	None	+134	Unincorporated Areas of Halifax County.
	Approximately 600 feet upstream of NC–48	None	+176	
Little Quankey Creek	At the confluence with Quankey Creek	None	+87	Town of Halifax.
	Approximately 0.75 mile upstream of NC–903	None	+87	
Nash Creek	Approximately 1.1 miles upstream of the confluence with Bells Branch.	None	+143	Unincorporated Areas of Halifax County.
	Approximately 2.5 miles upstream of the confluence with Bells Branch.	None	+172	
Quankey Creek	At the confluence with Roanoke River	None	+50	Unincorporated Areas of Halifax County.
	Approximately 0.5 mile upstream of SR–301 (South King Street).	None	+87	
Quankey Creek	At the confluence with Roanoke River	None	+50	Town of Halifax.
	At the confluence with Little Quankey Creek	None	+87	
Roanoke River	At the Martin/Bertie/Halifax County boundary	None	+28	Unincorporated Areas of Halifax County, City of Roanoke Rapids, Town of Halifax, Town of Weldon.
	At the downstream side of Gaston Dam	+133	+136	
Webbs Mill Branch	At the confluence with Keehukee Swamp	None	+34	Unincorporated Areas of Halifax County.
	Approximately 0.3 mile upstream of the confluence with Webbs Mill Branch Tributary 2.	None	+50	
Tributary 1	At the confluence with Webbs Mill Branch	None	+38	Unincorporated Areas of Halifax County.
	Approximately 0.7 mile upstream of the confluence with Webbs Mill Branch.	None	+57	
Tributary 2	At the confluence with Webbs Mill Branch	None	+45	Unincorporated Areas of Halifax County, Town of Scotland Neck.
	Approximately 0.6 mile upstream of the confluence with Webbs Mill Branch.	None	+51	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

City of Roanoke Rapids

Maps are available for inspection at the City of Roanoke Rapids Planning Department, 1040 Roanoke Avenue, Roanoke Rapids, North Carolina.

Send comments to The Honorable D. N. Bealle, Mayor, City of Roanoke Rapids, P.O. Box 38, Roanoke Rapids, North Carolina 27870.

Town of Halifax

Maps are available for inspection at the Halifax Town Hall, 24 South King Street, Halifax, North Carolina.

Send comments to The Honorable Gerald Wright, Mayor, Town of Halifax, P.O. Box 222, Halifax, North Carolina 27839.

Town of Scotland Neck

Maps are available for inspection at the Scotland Neck Town Hall, 1310 Main Street, Scotland Neck, North Carolina.

Send comments to The Honorable Robert Partin, Mayor, Town of Scotland Neck, P.O. Box 537, Scotland Neck, North Carolina 27874.

Town of Weldon

Maps are available for inspection at the Weldon Town Hall, 109 Washington Street, Weldon, North Carolina.

Send comments to The Honorable G.W. Draper, Jr., Mayor, Town of Weldon, P.O. Box 551, Weldon, North Carolina 27890.

Unincorporated Areas of Halifax County

Maps are available for inspection at the Halifax County Public Works Department, 26 North King Street, Room 102, Halifax, North Carolina.

Send comments to Ms. Carolynn Johnson, Acting Chairman, Halifax County Board of Commissioners, P.O. Box 38, Halifax, North Carolina 27839.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Martin County, North Carolina				
Beaverdam Creek	Approximately 200 feet downstream of Alternate U.S. Highway 64.	None	+42	Unincorporated Areas of Martin County.
	Approximately 0.7 mile upstream of Alternate U.S. Highway 64.	None	+52	
Conoho Creek	At the confluence with Roanoke River	+12	+18	Unincorporated Areas of Martin County.
	Approximately 1.7 miles upstream of Iron Mine Springs Road.	None	+81	
Tributary 1	At the confluence with Conoho Creek	None	+32	Unincorporated Areas of Martin County, Town of Hamilton.
	Approximately 2.4 miles upstream of the confluence with Conoho Creek.	None	+58	
Tributary 2	At the confluence with Conoho Creek	None	+41	Unincorporated Areas of Martin County.
	Approximately 900 feet upstream of State Route 1325.	None	+74	
Tributary 2A	At the confluence with Conoho Creek Tributary 2	None	+44	Unincorporated Areas of Martin County.
	Approximately 250 feet upstream of Cox Road	None	+63	
Tributary 3	At the confluence with Conoho Creek	None	+43	Unincorporated Areas of Martin County.
	Approximately 670 feet upstream of Haislip Road	None	+68	
Dog Branch	At the confluence with Ready Branch	None	+20	Unincorporated Areas of Martin County.
	Approximately 1,800 feet upstream of Highways 13 and 64.	None	+39	
Etheridge Swamp	At the confluence with Conoho Creek	None	+51	Unincorporated Areas of Martin County, Town of Oak City.
	Approximately 2.4 miles upstream of Edmondson Road.	None	+82	
Tributary 1	At the confluence with Etheridge Swamp	None	+56	Unincorporated Areas of Martin County.
	Approximately 0.4 mile upstream of County Line Road.	None	+88	
Tributary 2	At the confluence with Etheridge Swamp	None	+57	Unincorporated Areas of Martin County.
	Approximately 1,700 feet upstream of Edmondson Road.	None	+69	
Tributary 3	At the confluence with Etheridge Swamp	None	+60	Unincorporated Areas of Martin County.
	Approximately 0.5 mile upstream of Edmondson Road.	None	+71	
Tributary 3A	At the confluence with Etheridge Swamp Tributary 3	None	+60	Unincorporated Areas of Martin County.
	Approximately 0.5 mile upstream of Edmondson Road.	None	+69	
Hardison Mill Creek	At the confluence with Sweetwater Creek	None	+17	Unincorporated Areas of Martin County.
	Approximately 2.5 miles upstream of E.H. Williams Road (State Route 1538).	None	+41	
Tributary 1	At the confluence with Hardison Mill Creek	None	+21	Unincorporated Areas of Martin County.
	Approximately 100 feet downstream of Fairview Church Road (State Route 1514).	None	+23	
Tributary 2	At the confluence with Hardison Mill Creek	None	+23	Unincorporated Areas of Martin County.
	Approximately 1,100 feet upstream of Breasley Road	None	+43	
Long Creek	At the confluence with Hardison Mill Creek	None	+22	Unincorporated Areas of Martin County.
	Approximately 1,400 feet upstream of Hollow Pond Road.	None	+38	
Tributary 1	At the confluence with Long Creek	None	+28	Unincorporated Areas of Martin County.
	Approximately 0.5 mile upstream of the confluence with Long Creek.	None	+34	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Ready Branch	At the confluence with Sweetwater Creek	None	+17	Unincorporated Areas of Martin County.
	Approximately 0.8 mile upstream of Bear Grass Road	None	+45	
Roanoke River	At the Martin/Washington/Bertie County boundary	None	+7	Unincorporated Areas of Martin County, Town of Hamilton, Town of Jamesville, Town of Williamston.
	At the Martin/Halifax/Bertie County boundary	None	+28	
Tributary 4	At the confluence with Roanoke River	None	+28	Unincorporated Areas of Martin County.
	Approximately 1,500 feet upstream of the confluence with Roanoke River.	None	+42	
Tributary 4A	At the confluence with Roanoke River Tributary 4	None	+28	Unincorporated Areas of Martin County.
	Approximately 1,800 feet upstream of the confluence with Roanoke River Tributary 4.	None	+50	
Skewakee Gut Canal	At the confluence with Roanoke River	+12	+17	Unincorporated Areas of Martin County, Town of Williamston.
	Approximately 1,300 feet upstream of West Main Street (State Route 1445).	None	+74	
Smithwick Creek	At the confluence with Sweetwater Creek	None	+17	Unincorporated Areas of Martin County.
	Approximately 4 miles upstream of Smithwick Creek Church Road.	None	+43	
Sweetwater Creek	At the confluence with Roanoke River	+9	+16	Unincorporated Areas of Martin County, Town of Williamston.
	At the confluence of Ready Branch and Smithwick Creek.	None	+17	
Welch Creek	At the confluence with Roanoke River	None	+7	Unincorporated Areas of Martin County.
	Approximately 2.5 miles upstream of the confluence of Welch Creek Tributary 2.	None	+13	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Town of Hamilton

Maps available for inspection at the Hamilton Town Office, 101 North Front Street, Hamilton, North Carolina.
Send comments to The Honorable D.G. Matthews, III, Mayor of the Town of Hamilton, P.O. Box 249, Hamilton, North Carolina 27840.

Town of Jamesville

Maps available for inspection at the Jamesville Town Hall, 1211 Water Street, Jamesville, North Carolina.
Send comments to The Honorable Jane Wolfe, Mayor of the Town of Jamesville, P.O. Box 215, Jamesville, North Carolina 27846–0215.

Town of Oak City

Maps available for inspection at the Oak City Town Hall, 109 Commerce Street, Oak City, North Carolina.
Send comments to The Honorable Barbara Cotton, Mayor of the Town of Oak City, P.O. Box 298, Oak City, North Carolina 27857–0298.

Town of Williamston

Maps available for inspection at the Williamston Town Hall, Zoning Department, 106 East Main Street, Williamston, North Carolina.
Send comments to The Honorable Tommy Roberson, Mayor of the Town of Williamston, P.O. Box 506, Williamston, North Carolina 27892.

Unincorporated Areas of Martin County

Maps available for inspection at the Martin County Government Center, Building Inspections Department, 305 East Main Street, Williamston, North Carolina.
Send comments to Mr. Russell Overman, Martin County Manager, P.O. Box 668, Williamston, North Carolina 27892.

Stokes County, North Carolina

Ash Camp Creek	At the confluence with Town Fork Creek	None	+619	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 1.4 miles upstream of Brook Cove Road (SR 1941).	None	+660	
Beaverdam Creek	At the confluence with Big Creek	None	+898	Unincorporated Areas of Stokes County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 0.7 mile upstream of Palmer Road (SR 1465).	None	+1,003	
Belews Creek	Approximately 0.9 mile upstream of the confluence with Dan River.	None	+737	Unincorporated Areas of Stokes County.
	Approximately 0.7 mile downstream of the confluence of East Belews Creek.	None	+737	
Tributary 2	At the confluence with Belews Creek	None	+737	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Belews Creek.	None	+737	
Tributary 3	At the confluence with Belews Creek	None	+737	Unincorporated Areas of Stokes County.
	Approximately 0.9 mile upstream of the confluence with Belews Creek.	None	+737	
Tributary of Tributary 3	At the confluence with Belews Creek Tributary 3	None	+737	Unincorporated Areas of Stokes County.
	At the Stokes/Rockingham County boundary	None	+737	
Belews Lake	Entire shoreline within county	None	+737	Unincorporated Areas of Stokes County.
Big Beaver Island Creek	Approximately 900 feet upstream of the confluence of Big Beaver Island Creek Tributary 12.	None	+768	Unincorporated Areas of Stokes County.
	Approximately 1.3 miles upstream of Buffalo Road (SR 1636).	None	+860	
Big Creek	At the confluence with Dan River	None	+768	Unincorporated Areas of Stokes County.
	At the Stokes/Surry County boundary	None	+1,084	
Tributary 1	At the confluence with Big Creek	None	+1,023	Unincorporated Areas of Stokes County.
	Approximately 0.6 mile upstream of Stevens Road (SR 1404).	None	+1,074	
Tributary 2	At the confluence with Big Creek	None	+1,065	Unincorporated Areas of Stokes County.
	Approximately 1.3 miles upstream of the confluence with Big Creek.	None	+1,124	
Blackies Branch	At the confluence with Dan River	None	+655	Unincorporated Areas of Stokes County.
	Approximately 1,700 feet upstream of the confluence with Dan River.	None	+668	
Brushy Fork Creek	At the confluence with Town Fork Creek	None	+873	Unincorporated Areas of Stokes County.
	Approximately 0.8 mile upstream of Mountain View Church Road (SR 1998).	None	+873	
Buffalo Creek (into Mayo River).	At the Stokes/Rockingham County boundary	None	+753	Unincorporated Areas of Stokes County.
	Approximately 2.9 miles upstream of the Stokes/Rockingham County boundary.	None	+822	
Buffalo Creek (into Town Fork Creek).	At the confluence with Town Fork Creek	None	+662	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Town Fork Creek.	None	+669	
Bull Run	At the confluence with Town Fork Creek	None	+605	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 0.9 mile upstream of Martin Luther King Jr. Road.	None	+644	
Coolico Creek (Morgan Pond).	At the confluence with Old Field Creek	None	+630	Unincorporated Areas of Stokes County.
	Approximately 1.0 mile upstream of Easley Road (SR 1933).	None	+661	
Crooked Creek	Approximately 1.6 miles upstream of mouth	None	+793	Unincorporated Areas of Stokes County.
	Approximately 0.6 mile upstream of Frank Joyce Road (SR 1617).	None	+980	
Crooked Run Creek	At the confluence with Little Yadkin River	None	+788	Unincorporated Areas of Stokes County, City of King.
	Approximately 550 feet upstream of Maple Street	None	+1,070	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary	Approximately 160 feet upstream of the confluence with Crooked Run.	+903	+904	Unincorporated Areas of Stokes County, City of King.
	Approximately 1,800 feet upstream of the confluence of Crooked Run Creek Tributary 2 of Tributary.	None	+992	
Tributary 2 of Tributary	Approximately 500 feet upstream of the confluence with Crooked Run Creek.	None	+978	City of King.
	Approximately 0.4 mile upstream of the confluence with Crooked Run Creek.	None	+1,000	
Dan River	Approximately 500 feet downstream of the confluence of Dan River Tributary 50.	None	+586	Unincorporated Areas of Stokes County, Town of Danbury.
	Approximately 100 feet downstream of most upstream crossing of State boundary.	None	+1,137	
Tributary 48	At the Stokes/Rockingham County boundary	None	+591	Unincorporated Areas of Stokes County.
	Approximately 350 feet upstream of the Stokes/Rockingham County boundary.	None	+593	
Tributary 50	At the confluence with Dan River	None	+586	Unincorporated Areas of Stokes County.
	Approximately 0.8 mile upstream of U.S. Route 311	None	+599	
Tributary 51	At the confluence with Dan River	None	+586	Unincorporated Areas of Stokes County.
	Approximately 50 feet downstream of U.S. Route 311	None	+586	
Tributary 52	At the confluence with Dan River	None	+597	Unincorporated Areas of Stokes County.
	Approximately 0.3 mile upstream of Middleton Loop (SR 1909).	None	+608	
Tributary 54	At the confluence with Dan River	None	+610	Unincorporated Areas of Stokes County.
	Approximately 0.7 mile upstream of the confluence with Dan River.	None	+628	
Tributary 56	At the confluence with DanRiver	None	+616	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Dan River.	None	+648	
Tributary 57	At the confluence with DanRiver	None	+712	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Dan River.	None	+745	
Tributary 58	At the confluence with Dan River	None	+894	Unincorporated Areas of Stokes County.
	Approximately 0.4 mile upstream of Collinstown Road (SR 1432).	None	+1,096	
Tributary near Dodgetown Road.	At the confluence with Dan River	None	+662	Unincorporated Areas of Stokes County.
	Approximately 0.6 mile upstream of the confluence with Dan River.	None	+679	
Tributary near Mission Road.	At the confluence with Dan River	None	+686	Unincorporated Areas of Stokes County.
	Approximately 0.3 mile upstream of the confluence with Dan River.	None	+691	
Danbury Creek	At the confluence with Little Yadkin River	None	+850	Unincorporated Areas of Stokes County, City of King.
	Approximately 1,000 feet upstream of Goff Road (SR 1138).	None	+895	
East Prong Little Yadkin River.	At the confluence with Little Yadkin River	None	+862	Unincorporated Areas of Stokes County.
	Approximately 2.6 miles upstream of Volunteer Road (SR 1136).	None	+918	
Elk Creek	At the confluence with Dan River	None	+849	Unincorporated Areas of Stokes County.
	Approximately 100 feet downstream of the North Carolina/Virginia State boundary.	None	+1,006	
Eurins Creek	Approximately 300 feet upstream of the confluence with Dan River.	None	+588	Unincorporated Areas of Stokes. County
	Approximately 2.2 miles upstream of U.S. Route 311	None	+657	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Tributary 1	At the confluence with Eurins Creek	None	+603	Unincorporated Areas of Stokes County.
	Approximately 0.4 mile upstream of the confluence with Eurins Creek.	None	+626	
Tributary 2	At the confluence with Eurins Creek	None	+604	Unincorporated Areas of Stokes County.
	Approximately 0.6 mile upstream of the confluence with Eurins Creek.	None	+627	
Tributary 3	At the confluence with Eurins Creek	None	+650	Unincorporated Areas of Stokes County.
	Approximately 0.4 mile upstream of the confluence with Eurins Creek.	None	+661	
Flat Shoal Creek	At the confluence with Dan River	None	+684	Unincorporated Areas of Stokes County, Town of Danbury.
	Approximately 0.3 mile upstream of Young Road (SR 1990).	None	+825	
Fulk Creek	At the confluence with Dan River	None	+601	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 1.5 miles upstream of U.S. Route 311	None	+649	
Goff Creek	At the confluence with Danbury Creek	None	+894	Unincorporated Areas of Stokes County, City of King.
	Approximately 1,800 feet upstream of Brown Road (SR 1128).	None	+927	
Grassy Creek Tributary 8	At the Stokes/Surry County boundary	None	+918	Unincorporated Areas of Stokes County.
	Approximately 1,100 feet upstream of the Stokes/Surry County boundary.	None	+927	
Leak Branch	At the confluence with Town Fork Creek	None	+703	Unincorporated Areas of Stokes County.
	Approximately 50 feet upstream of the Stokes/Forsyth County boundary.	None	+703	
Lick Creek	At the confluence with Town Fork Creek	None	+609	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	At the Stokes/Forsyth County boundary	None	+647	
Tributary (near Walnut Cove).	At the confluence with Lick Creek	None	+628	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 900 feet upstream of the confluence with Lick Creek.	None	+646	
Lick Creek Tributary 1	At the confluence with LickCreek	None	+646	Unincorporated Areas of Stokes County
	At the Stokes/Forsyth County boundary	None	+647	
Little Beaver Island Creek	Approximately 1.6 miles downstream of Dunlap Road (SR 1683).	None	+657	Unincorporated Areas of Stokes County.
	Approximately 50 feet upstream of Franklin Moore Road (SR 1679).	None	+785	
Little Crooked Creek	At the confluence with Crooked Creek	None	+839	Unincorporated Areas of Stokes County.
	Approximately 1,900 feet upstream of Hope Beasley Road (SR 1615).	None	+933	
Little Dan River	At the confluence with Dan River	None	+1,018	Unincorporated Areas of Stokes County.
	Approximately 1,000 feet upstream of the confluence of Little Dan River Tributary 1.	None	+1,033	
River Tributary 1	At the confluence with Little Dan River	None	+1,029	Unincorporated Areas of Stokes County.
	Approximately 0.9 mile upstream of the confluence with Little Dan River.	None	+1,071	
Little Neatman Creek	At the confluence with Neatman Creek	None	+779	Unincorporated Areas of Stokes County.
	Approximately 0.6 mile upstream of the confluence with Neatman Creek.	None	+807	
Little Peter Creek	At the confluence with Peters Creek	None	+861	Unincorporated Areas of Stokes County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,200 feet upstream of the confluence of Little Peter Creek Tributary.	None	+1,004	
Little Peter Creek Tributary ..	At the confluence with Peter Creek Tributary	None	+992	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Peter Creek Tributary.	None	+1,015	
Little Snow Creek	At the confluence with Snow Creek	None	+774	Unincorporated Areas of Stokes County.
	Approximately 1.9 miles upstream of Moorefield Road (SR 1657).	None	+867	
Little Yadkin River	Flooding affecting Stokes County approximately 850 feet east along county boundary from Little Yadkin River Tributary near Perch Road streamline.	None	+776	Unincorporated Areas of Stokes County.
	Approximately 1.0 mile upstream of High Bridge Road (SR 1157).	None	+948	
Tributary 1	At the confluence with the Little Yadkin River	None	+815	Unincorporated Areas of Stokes County.
	Approximately 2,475 feet upstream of the confluence with Little Yadkin River.	None	+821	
Tributary 2	At the confluence with Little Yadkin River	None	+833	Unincorporated Areas of Stokes County.
	Approximately 0.4 mile upstream of Westmoreland Road (SR 1104).	None	+845	
Tributary near Peach Road.	At the Stokes/Forsyth County boundary	None	+775	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with Little Yadkin River.	None	+781	
Lynn Branch	At the confluence with Snow Creek	None	+664	Unincorporated Areas of Stokes County.
	Approximately 0.8 mile upstream of Duggins Road (SR 1696).	None	+712	
Marshall Creek	At the confluence with Big Creek	None	+884	Unincorporated Areas of Stokes County.
	Approximately 0.7 mile upstream of George Road (SR 1459).	None	+1,022	
Martin Creek	At the confluence with Town Fork Creek	None	+642	Unincorporated Areas of Stokes County.
	Approximately 0.8 mile upstream of Brook Core Road (SR 1941).	None	+687	
Miles Creek	At the confluence with Town Fork Creek	None	+617	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 2.5 miles upstream of East Road (SR 1937).	None	+800	
Mill Creek	At the confluence with Dan River	None	+693	Unincorporated Areas of Stokes County, Town of Danbury.
	Approximately 1.7 miles upstream of NC Route 8	None	+820	
Mill Creek (Hawkins Mill Creek).	At the confluence with Snow Creek	None	+750	Unincorporated Areas of Stokes County.
	Approximately 1.7 miles upstream of the confluence of Snow Creek.	None	+856	
Neatman Creek	At the confluence with Town Fork Creek	None	+660	Unincorporated Areas of Stokes County.
	Approximately 900 feet upstream of Flat Shoals Road (SR 2019).	None	+938	
North Double Creek	At the confluence with Dan River	None	+758	Unincorporated Areas of Stokes County.
	Approximately 3.1 miles upstream of NC Route 66 ...	None	+943	
Old Field Creek	At the confluence with Tom Fork Creek	None	+624	Unincorporated Areas of Stokes County.
	At the Stokes/Forsyth County boundary	None	+653	
Paynes Branch	At the confluence with Town Fork Creek	None	&+715	Unincorporated Areas of Stokes County.
	Approximately 50 feet upstream of the Stokes/Forsyth County boundary.	None	&plus 780	
Paynes Branch Tributary	At the confluence with Paynes Branch	None	&+736	Unincorporated Areas of Stokes County.
	At the Stokes/Forsyth County boundary	None	&plus 863	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Peters Creek	At the confluence with Dan River	None	&+805	Unincorporated Areas of Stokes County.
	Approximately 200 feet downstream of the North Carolina/Virginia State boundary.	None	&+1,015	
Pinch Gut Creek	At the confluence with Big Creek	None	+916	Unincorporated Areas of Stokes County.
	Approximately 1.3 miles upstream of Jackson Road (SR 1214).	None	&plus1,039	
Red Bank Creek	At the confluence with Town Fork Creek	None	&+651	Unincorporated Areas of Stokes County.
	At the Stokes/Forsyth County boundary	None	&+694	&
Redman Creek	At the confluence with Snow Creek	None	&+674	Unincorporated Areas of Stokes County.
	Approximately 1.7 miles upstream of the confluence with Snow Creek.	None	&+814	&
Reed Creek	Approximately 0.6 mile downstream of Reynolds Road (SR 1688).	None	&+606	Unincorporated Areas of Stokes. County.
	Appoximately 0.7 mile upstream of NC Route 772	None	+690	
Scott Branch	At the confluence with Dan River	None	+694	Unincorporated Areas of Stokes County, Town of Danbury.
	Approximately 500 feet upstream of NC Route 8	None	+764	
Seven Island Creek	At the confluence with Dan River	None	+708	Unincorporated Areas of Stokes County.
	Approximately 800 feet upstream of Seven Island Road (SR 1665).	None	+708	
Snow Creek	At the confluence with Dan River	None	+664	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of Moore Road (SR 1602).	None	+981	
South Crooked Creek	At the confluence with Little Crooked Creek	None	+856	Unincorporated Areas of Stokes County.
&	Approximately 1.5 miles upstream of the confluence with Little Crooked Creek.	None	+918	
South Double Creek	At the confluence with Dan River	None	+756	Unincorporated Areas of Stokes County.
	Approximately 1.8 miles upstream of NC Route 66	None	+864	
South Double Creek Tributary.	At the confluence with South Double Creek	None	+765	Unincorporated Areas of Stokes County.
	Approximately 1.3 miles upstream of the confluence with South Double Creek.	None	+804	
Timmons Creek	At the confluence with Town Fork Creek	None	+751	Unincorporated Areas of Stokes County.
	Approximately 0.9 mile upstream of State Road (SR 1966).	None	+809	
Town Fork Creek Tributary 3	At the confluence with Town Fork Creek	None	+626	Unincorporated Areas of Stokes County
	Approximately 0.7 mile upstream of the confluence with Town Fork Creek.	None	+641	
Town Fork Creek	At the confluence with Dan River	None	+598	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 300 feet upstream of Covington Road (SR 2009).	None	+957	
Tributary 1	At the confluence with Town Fork Creek	None	+610	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 0.5 mile upstream of Ninth Street	None	+718	
Tributary 2	At the confluence with Town Fork Creek	None	+617	Unincorporated Areas of Stokes County, Town of Walnut Cove.
	Approximately 1,600 feet upstream of NC Route 65	None	+664	
Tributary 4	At the confluence with Town Fork Creek	None	+636	Unincorporated Areas of Stokes County.
	Approximately 1,500 feet upstream of Brook Cove Road (SR 1941).	None	+652	
Voss Creek	At the confluence with Town Fork Creek	None	+633	Unincorporated Areas of Stokes County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 1,800 feet upstream of Rosebud Road (SR 1945).	None	+756	
Voss Creek Tributary	At the confluence with Voss Creek	None	+661	Unincorporated Areas of Stokes County.
	Approximately 1,400 feet upstream of the confluence with Voss Creek.	None	+673	
Watts Creek	At the confluence with Town Fork Creek	None	+642	Unincorporated Areas of Stokes County.
	Approximately 1.4 miles upstream of Brook Cove Road (SR 1941).	None	+723	
West Belews Creek	At the confluence with Belews Lake	None	+737	Unincorporated Areas of Stokes County.
	At the Stokes/Forsyth County boundary	None	+737	
West Prong Little Yadkin River.	At the confluence with Little Yadkin River	None	+882	Unincorporated Areas of Stokes County.
	Approximately 0.4 mile upstream of Brims Grove Road (SR 2109).	None	+1,002	
West Prong Little Yadkin River Tributary.	At the confluence with West Prong Little Yadkin River	None	+990	Unincorporated Areas of Stokes County.
	Approximately 0.5 mile upstream of the confluence with West Prong Little Yadkin River.	None	+1,006	
Zilphy Creek	At the confluence with Dan River	None	+633	Unincorporated Areas of Stokes County.
	Approximately 0.7 mile upstream of Power Dam Road (SR 1712).	None	+659	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum

ADDRESSES

City of King

Maps are available for inspection at the King City Hall, 229 South Main Street, King, North Carolina.
Send comments to The Honorable Jack Warren, Mayor, City of King, P.O. Box 1132, King, North Carolina 27021.

Town of Danbury

Maps are available for inspection at the Danbury Town Hall, 201 Courthouse Circle, Danbury, North Carolina.
Send comments to The Honorable Jane Priddy-Charleville, Mayor, Town of Danbury, P.O. Box 4, Danbury, North Carolina 27016.

Town of Walnut Cove

Maps are available for inspection at the Walnut Cove Town Hall, 208 West Third Street, Walnut Cove, North Carolina.
Send comments to The Honorable Kenneth Starnes, Mayor, Town of Walnut Cove, P.O. Box 127, Walnut Cove, North Carolina 27052.

Unincorporated Areas of Stokes County

Maps are available for inspection at the Stokes County Government Center, 1012 Main Street, Danbury, North Carolina.
Send comments to Ms. Darlene Bullins, Stokes County Interim County Manager, Administration Building,1012 Main Street, Danbury, North Carolina 27016.

Knox County, Tennessee

Beaver Creek	Approximately 1.6 miles upstream of confluence with Clinch River.	+797	+796	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 600 feet upstream of Tazewell Pike	None	+1,081	
Berry Branch	At confluence with Lyon Creek	None	+881	Knox County (Unincorporated Areas).
	Approximately 3,346 feet upstream of confluence with Lyon Creek.	None	+889	
Brice Branch	At confluence with Flat Creek	None	+946	Knox County (Unincorporated Areas).
	Approximately 1,320 feet upstream of confluence with Flat Creek.	None	+948	
Burnett Creek	At confluence with French Broad River	None	+827	Knox County (Unincorporated Areas).
	Approximately 763 feet upstream of John Sevier Highway.	None	+865	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Cliff Creek	At confluence with Lyon Creek	None	+849	Knox County (Unincorporated Areas).
	Approximately 2.1 miles upstream of Randles Road	None	+985	
Conner Creek	Just upstream of Rippling Drive	None	+796	Knox County (Unincorporated Areas).
	Approximately 307 feet upstream of Conner Creek Circle.	None	+960	
Cox Creek	At confluence with Beaver Creek	None	+1,036	Knox County (Unincorporated Areas).
	Approximately 701 feet upstream of Tazewell Road	None	+1,092	
Tributary to Cox Creek	At confluence with Cox Creek	None	+1,044	Knox County (Unincorporated Areas).
	Approximately 149 feet upstream of Cedarbreeze Road.	None	+1,073	
Echo Valley Tributary	At confluence with Ten Mile Creek	+875	+876	Knox County (Unincorporated Areas).
	Approximately 157 feet upstream of Echo Valley Road.	None	+880	
First Creek	At confluence with Tennessee River	+821	+822	City of Knoxville.
	Approximately 379 feet upstream of Knox Road	None	+967	
Tributary No. 1	At confluence with First Creek	None	+962	City of Knoxville.
	Approximately 1,341 feet upstream of Rockcrest Road.	None	+994	
Tributary No. 2	At confluence with First Creek	None	+962	City of Knoxville.
	Approximately 1,011 feet upstream of Meadow Road	None	+985	
Flat Creek	At confluence with Helston River	None	+848	Knox County (Unincorporated Areas).
	Approximately 937 feet upstream of Longmire Road	None	+992	
Fourth Creek	At confluence with Tennessee River	+818	+819	City of Knoxville.
	Approximately 227 feet upstream of Middlebrook Pike	+920	+925	
Tributary No. 1	At confluence with Fourth Creek	+835	None	City of Knoxville.
	Approximately 365 feet upstream of Lawford Road	+836	+922	
Tributary No. 3	At confluence with Fourth Creek	None	+915	City of Knoxville.
	Approximately 586 feet upstream of Picadilly Road	None	+947	
French Broad	At confluence with French Broad	+826	+825	Knox County (Unincorporated Areas), City of Knoxville.
	At Knox County boundary	None	+860	
Grassy Creek	At confluence with Beaver Creek	+974	+973	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 0.55 mile upstream of Grassy Creek Way.	None	+1,024	
Grassy Creek Tributary	At confluence with Grassy Creek	None	+993	Knox County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Johnson Road	None	+1,016	
Hickory Creek	Approximately 500 feet upstream of Campbell Street	None	+926	Knox County (Unincorporated Areas).
	Approximately 4,281 feet upstream of Cooper Lane	None	+1,025	
Hines Branch	At confluence with Beaver Creek	None	+1,014	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 1,835 feet upstream of Mynatt Drive	None	+1,078	
Hines Creek	At confluence with French Broad River	None	+832	Knox County (Unincorporated Areas).
	Approximately 0.44 mile upstream of Old Sevierville Pike.	None	+921	
Tributary to Hines Creek	At confluence with Hines Creek	None	+902	Knox County (Unincorporated Areas).
	Approximately 0.47 mile upstream of confluence with Hines Creek.	None	+919	
Kerns Branch	At confluence with Beaver Creek	None	+1,058	Knox County (Unincorporated Areas).
	Approximately 842 feet upstream of Majors Road	None	+1,130	
Knob Creek	At confluence with Tennessee river	None	+818	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 0.6 mile upstream of Martin Mill Pike	None	+903	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Knob Fork	At confluence with Beaver Creek	+995	+994	Knox County (Unincorporated Areas).
	Approximately 183 feet upstream of Fountain City Road.	None	+1,080	
Limestone Creek	At confluence with Tuckahoe creek	None	+872	Knox County (Unincorporated Areas).
	Approximately 1,736 feet upstream of Smith School Road.	None	+889	
Little Flat Creek	At confluence with Flat Creek	None	+965	Knox County (Unincorporated Areas).
	Approximately 0.8 mile upstream of Clement Road	None	+1,042	
Little Turkey Creek	At the confluence with Turkey Creek	+815	+816	Knox County (Unincorporated Areas), Town of Farragut.
	Approximately 900 feet upstream of Brochardt Boulevard.	None	+916	
Little Turkey Creek Tributary	At confluence with Little Turkey Creek	None	+908	Town of Farragut.
	Approximately 131 feet upstream of Hickory Woods Road.	None	+947	
Love Creek Tributary	At confluence with Love Creek	None	+836	City of Knoxville.
	Approximately 1,086 feet upstream of Chilhavee Cant	None	+867	
Lyon Creek	At confluence with Holsten River	None	+849	Knox County (Unincorporated Areas)
	Approximately 461 feet upstream of Carter Mill Drive	None	+987	
Mill Branch	At confluence with Willow Fork	+1,024	+1,027	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 440 feet upstream of Maynardville Pike.	None	+1,142	
Murphy Creek	Approximately 4,700 feet downstream of Southern Railway.	+975	+974	Knox County (Unincorporated Areas).
	Approximately 1,350 feet upstream of Link Road	None	+1,087	
North Fork Beaver Creek	At confluence with Beaver Creek	+1,015	+1,018	Knox County (Unincorporated Areas).
	Approximately 128 feet upstream of McCloud Road	None	+1,096	
North Fork Turkey Creek	Approximately 2,444 feet downstream of Kingston Pike.	+853	+852	Town of Farragut.
	Approximately 1,375 feet upstream of Grigsby Chapel Road.	None	+944	
Plumb Creek	Approximately 560 feet downstream of Hardin Valley Road.	+940	+941	Knox County (Unincorporated Areas).
	Approximately 146 feet upstream of Hickey Road	None	+977	
Roseberry Creek	Approximately 1,200 feet upstream of confluence with Holsten River.	+846	+845	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 1,352 feet upstream of Maloneyville Road.	None	+1,030	
Sinking Creek	At confluence with Tennessee River	None	+817	Knox County (Unincorporated Areas).
	Approximately 1,200 feet upstream of Wallace Road	None	+913	
Sinking Creek Tributary to Ten Mile Creek.	At confluence with Ten Mile Creek	+894	+900	Knox County (Unincorporated Areas).
	Approximately 396 feet upstream of Middlebrook Pike	None	+997	
Sixmile Branch	At end of Burnett Creek	None	+865	Knox County (Unincorporated Areas).
	Approximately 636 feet upstream of East Maine Drive	None	+908	
South Fork Beaver Creek	At confluence with Beaver Creek	None	+1,074	Knox County (Unincorporated Areas).
	Approximately 392 feet upstream of Maloneyville Road.	None	+1,107	
Stock Creek	Approximately 1.23 miles downstream of Martin Mill Pike.	+820	+819	Knox County (Unincorporated Areas).
	Approximately 58 feet upstream of McCammon Road	None	+892	
Swanpond Creek	At a point just downstream of Huckleberry Springs Road.	+933	+932	Knox County (Unincorporated Areas).
	Approximately 3,200 feet upstream of Wooddale Church Road.	None	+996	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground		Communities affected
		Effective	Modified	
Ten Mile Creek	At confluence with Ebenizers Sinkhole	+878	+876	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 0.5 mile upstream of Robinson Road	None	+967	
Thompson School Tributary	At confluence with Beaver Creek	None	+1,067	Knox County (Unincorporated Areas).
	Approximately 545 feet upstream of East Emory Road.	None	+1,086	
Tuckahoe Creek	At confluence with French Broad River	None	+850	Knox County (Unincorporated Areas).
	Approximately 3,396 feet upstream of Dave Smith Road.	None	+906	
Turkey Creek	At confluence with Tennessee River	None	+816	Knox County (Unincorporated Areas), Town of Farragut.
	Approximately 1,606 feet upstream of Dutchtown Road.	+815	+960	
West Hills Tributary	At confluence with Ten Mile Creek	+899	+902	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 295 feet upstream of Corteland Drive	None	+931	
Whites Creek	At confluence with First Creek	+955	+957	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 0.6 mile upstream of Clearbrook Road	None	+989	
Williams Creek	At confluence with Tennessee River	+822	+823	City of Knoxville.
	Approximately 451 feet upstream of Wilson Avenue	None	+898	
Willow Fork	At confluence with Beaver Creek	+1,022	+1,027	Knox County (Unincorporated Areas).
	Approximately 628 feet upstream of Brackett Road	None	+1,093	
Little River	At confluence with Tennessee River	+817	+818	Knox County (Unincorporated Areas), City of Knoxville.
	Approximately 0.77 mile upstream of Alro Highway	None	+819	
Tennessee River	Approximately 28.0 miles downstream of Pellissippi Parkway.	+815	+816	Knox County (Unincorporated Areas), City of Knoxville.
	Just upstream of confluence of Williams Creek	+822	+823	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ National American Vertical Datum.

ADDRESSES

Town of Farragut

Maps available for inspection at the Farragut Town Hall, Engineering Department, 11408 Municipal Center Drive, Farragut, Tennessee.

Send comments to Mr. Dave Olson, Farragut Town Administrator, Farragut Town Hall, Administration Department, 11408 Municipal Center Drive, Farragut, Tennessee 37922.

Knox County (Unincorporated Areas)

Maps available for inspection at Knox County Engineering and Public Works, 205 West Baxter Avenue, Knoxville, Tennessee.

Send comments to The Honorable Michael R. Ragsdale, Mayor of Knox County, Office of County Mayor, 400 West Main Street, Suite 615, Knoxville, Tennessee 37902.

City of Knoxville

Maps available for inspection at the City of Knoxville Engineering Division, City County Building, 400 Main Street, Room 480, Knoxville, Tennessee.

Send comments to the Honorable Bill Haslam, Mayor of the City of Knoxville, P.O. Box 1631, Knoxville, Tennessee 37901.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 5, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17266 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7471]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Kemper County, Mississippi, and Incorporated Areas				
Hull Branch	Approximately 10,360 feet upstream of Old Jackson Road.	None	+336	Kemper County (Unincorporated Areas).
	At the confluence of Snoody Creek	None	+383	
Okatibbe Creek	Approximately 2,340 feet upstream of Bull Swamp Road.	None	+374	Kemper County (Unincorporated Areas).
	At the confluence with Houston Creek	None	+408	
Snoody Creek	At the confluence with Hull Branch	None	+327	Town of De Kalb, Kemper County (Unincorporated Areas).
	Approximately 2,290 feet downstream of State Road 39.	None	+336	

ADDRESSES

Unincorporated Areas of Kemper County

Maps are available for inspection at Kemper County Courthouse, 100 Main Street, De Kalb, MS 39328.
Send comments to Mr. James Granger, Board Chairman, Kemper County, P.O. Box 188, De Kalb, MS 39328.

Town of De Kalb

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Maps are available for inspection at Kemper County Courthouse, 100 Main Street, De Kalb, MS 39328. Send comments to The Honorable Homer Hall, Mayor, P.O. Box 579, De Kalb, MS 39328.				
Ozaukee County, Wisconsin, and Incorporated Areas				
Canyon Creek	At mouth of Lake Michigan	[1] *590	[1] *590	City of Port Washington, Unincorporated Areas of Ozaukee County.
	At intersection of Interstate 43	None	*701	
Cedar Creek	At mouth at Milwaukee River	*680	*679	City of Cedarburg, Village of Grafton, Unincorporated Areas of Ozaukee County.
	6450 feet upstream of County Highway Y	*838	*836	
Fredonia Creek	At mouth at Milwaukee River	[1] *780	[1] *781	Village of Fredonia, Unincorporated Areas of Ozaukee County.
	2500 feet upstream from County Highway D	None	*831	
Milwaukee River	At County Line Road	*653	*653	Village of Thiensville.
	Downstream of northern crossing of Riverside Road	*798	*798	City of Mequon, Village of Grafton.
	Upstream of south crossing of Riverside Road	*805	*805	Village of Saukville, Village of Fredonia.
	Downstream of Hickory Road	*835	*835	Village of Newburg, Unincorporated Areas of Ozaukee County.
Mineral Springs	At mouth at Sauk Creek	[1] *590	[1] *590	City of Port Washington.
	300 feet upstream from State Highway 32	None	*719	
Mole Creek	At mouth at Milwaukee River	[1] *746	[1] *746	Village of Grafton, Unincorporated Areas of Ozaukee County.
	600 feet upstream of Center Road	None	*818	
North Branch of Milwaukee River.	At mouth at Milwaukee River	*797	*798	Unincorporated Areas of Ozaukee County.
	Downstream of northern crossing of Riverside Road	*799	*799	
Pigeon Creek	At mouth at Milwaukee River approximately 100 feet downstream from Green Bay Road.	[1] *660	[1] *660	Village of Thiensville, City of Mequon.
	1900 feet upstream of Highland Road	None	*732	
Sauk Creek	At mouth of Lake Michigan	[1] *590	*590	City of Port Washington, Village of Belgium, Unincorporated Areas of Ozaukee County.
	2000 feet upstream of County Highway KK	None	*796	
Ulao Creek	At mouth at Milwaukee River	None	[1] *664	City of Mequon, Village of Grafton, Unincorporated Areas of Ozaukee County.
	2300 feet upstream of State Highway 32	None	*744	
Un-named Tributary #1 to Belgium Holland Drainage Ditch.	At intersection with County Highway K	None	*720	Village of Belgium, Unincorporated Areas of Ozaukee County.
	100 feet downstream of Park Street	None	*731	
Un-named Tributary #1 to Belgium Holland Drainage Ditch Overflow #1.	At the downstream confluence of Un-named Tributary #1 to Belgium Holland Drainage Ditch.	None	*723	Unincorporated Areas of Ozaukee County.
	At the upstream overflow from Un-named Tributary #1 to Belgium Holland Drainage Ditch (750 feet downstream of Park St).	None	*724	
Un-named Tributary #1 to Belgium Holland Drainage Ditch Overflow #2.	At the confluence of Un-named Tributary #1 to Belgium Holland Drainage Ditch.	None	*730	Village of Belgium, Unincorporated Areas of Ozaukee County.
	At the upstream overflow of Un-named Tributary #1 to Belgium Holland Drainage Ditch (2750 feet downstream of Jay Road).	None	*730	
Un-named Tributary #1 to Milwaukee River.	At mouth of the Milwaukee River	[1] *759	[1] *758	Village of Saukville.
	1690 feet upstream of Dekora Woods Boulevard	None	*775	
Un-named Tributary #1 to Ulao Creek.	At mouth of Ulao Creek	None	*664	City of Mequon.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD). + Elevation in feet (NAVD). # Depth in feet above ground		Communities affected
		Effective	Modified	
Un-named Tributary to Un-named Tributary #1 to Ulao Creek.	1700 feet upstream of County Highway W	None	*673	City of Mequon.
	At mouth of Un-named Tributary #1 to Ulao Creek	None	*664	
Un-named Tributary #2 to Pigeon Creek.	6750 feet upstream of Interstate 43	None	*673	City of Mequon, City of Cedarburg, Unincorporated Areas of Ozaukee County.
	At mouth of Pigeon Creek	None	*623	
Un-named Tributary #3 to Milwaukee River.	2300 feet upstream of State Highway 181	None	*806	Village of Fredonia.
	200 feet downstream of Wheeler Avenue	*791	*791	
	500 feet upstream of Meadowbrook Drive	*798	*798	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.
[1] Flood Elevation based on Backwater.

ADDRESSES:

Village of Belgium

Maps are available for inspection at 195 Commerce St., Belgium, WI 53004–0224.

Send comments to Donald Schommer, Village President, 820 North St., Belgium, WI 53004.

City of Cedarburg

Maps are available for inspection at W63 N645 Washington Avenue, Cedarburg, WI 53012–0049.

Send comments to Gregory P. Myers, Mayor, W63 N645 Washington Avenue, Cedarburg, WI 53012–0049.

Village of Fredonia

Maps are available for inspection at Village Hall, 416 Fredonia Ave., Fredonia, WI 53021.

Send comments to William Hamm, Village President, P.O. Box 159, 416 Fredonia Ave Fredonia, WI 53021.

Village of Grafton:

Maps are available for inspection at Village Hall—Thomas Johnson, 1971 Washington St., Grafton, WI 53024.

Send comments to Jim Brunquell, Village President, 1971 Washington St., Grafton, WI 53024.

City of Mequon

Maps are available for inspection at 11333 N. Cedarburg Road, Mequon, WI 53092.

Send comments to Christine Nuernberg, Mayor, 11333 N. Cedarburg Road, Mequon, WI 53092.

Village of Newburg

Maps are available for inspection at Village Hall, 614 Main St., Newburg, WI 53060.

Send comments to William Sackett, Village President, 614 Main Street, P.O. Box 50, Newburg, WI 53060.

Unincorporated Areas of Ozaukee County

Maps are available for inspection at Planning, Resources, and Land Management Department 121 West Main Street, P.O. Box 994, Port Washington, WI 53704–0994.

Send comments to Robert Brooks, County Board Chairperson, 121 West Main Street, Port Washington, WI 53704.

City of Port Washington

Maps are available for inspection at Office of Planning and Development, 100 W. Grand Avenue, Port Washington, WI 53074.

Send comments to Scott Huebner, Mayor, 100 W. Grand Avenue, P.O. Box 307, Port Washington, WI 53074.

Village of Saukville

Maps are available for inspection at Planning Department, 639 East Green Bay Ave., Saukville, WI 53080.

Send comments to Dawn Wagner, Village Administrator, 639 East Green Bay Ave, Saukville, WI 53080.

Village of Thiensville

Maps are available for inspection at 250 Elm Street, Thiensville, WI 53092.

Send comments to Karl V. Herts, Village President, 250 Elm Street.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 6, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17270 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7469]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Beaver Dam Creek	Approximately 1,500 feet upstream of the confluence with Flint River.	+796	+797	Clayton County (Unincorporated Areas).
	Approximately 2,500 feet upstream of the confluence with Flint River.	+796	+797	
East Tributary of Jester Creek.	At the confluence with West Tributary Jester Creek	+930	+933	City of Forest Park.
	Approximately 260 feet upstream of the confluence with West Tributary Jester Creek.	+932	+933	
Flint River Tributary	Approximately 570 feet upstream of the confluence with Flint River.	+842	+843	Clayton County (Unincorporated Areas), City of Riverdale.
	Approximately 1,250 feet upstream of the confluence with Flint River.	+843	+844	
Hurricane Creek	Approximately 60 feet downstream of Turner Road	+783	+784	Clayton County (Unincorporated Areas).
	Approximately 350 feet upstream of Turner Road	+783	+784	
Jester Creek	Approximately 200 feet upstream of the confluence with Flint River.	+815	+816	Clayton County (Unincorporated Areas).

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Approximately 60 feet upstream of Tara Boulevard/ U.S. Highway 41/19/State Highway 3C.	+815	+816	
Lake Spivey	Entire shoreline	None	+786	Clayton County (Unincorporated Areas).
Mud Creek	At the confluence Flint River	+837	+838	Clayton County (Unincorporated Areas).
	Approximately 850 feet downstream of Ashmore Drive	+840	+841	
Panther Creek	Approximately 3,600 feet downstream of State Highway 413/Interstate Highway 675.	+752	+750	Clayton County (Unincorporated Areas).
	Approximately 2,220 feet downstream of State Highway 413/Interstate Highway 675.	+752	+751	
Sullivan Creek	At the confluence with Flint River	+858	+859	Clayton County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the confluence with Flint River.	+859	+860	
Upton Creek	Approximately 50 feet upstream of Double Bridge Road.	+802	+803	Clayton County (Unincorporated Areas).
	Approximately 2,325 feet upstream of Double Bridge Road.	+805	+806	
West tributary of Jester Creek.	At the confluence with Jester Creek	+923	+924	City of Forest Park.
	Approximately 320 feet upstream of confluence with Jester Creek.	+923	+924	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Clayton County (Unincorporated Areas)

Maps are available for inspection at Clayton County Transportation and Development Department, 7960 North McDonourgh Street, Jonesboro, Georgia.

Send comments to Mr. Eldrin Bell, Commissioner, Clayton County Board of Commissioners, Clayton County Administration, Annex 1, 112 Smith Street, Jonesboro, Georgia 30236.

City of Forest Park

Maps are available for inspection at City of Forest Park Public Works Department, 5230 Jones Road, Forest Park, Georgia.

Send comments to The Honorable Charles Hall, Mayor, City of Forest Park, 745 Forest Parkway, Forest Park, Georgia 30297.

City of Riverdale

Maps are available for inspection at Riverdale Community Department, 971 Wilson Road, Riverdale, Georgia.

Send comments to The Honorable Phaedra Graham, Mayor, City of Riverdale, 6690 Church Street, Riverdale, Georgia 30274.

Muscogee County, Georgia (Consolidated Government)

Califon Creek	At the confluence with Lower Bull Creek	+227	+228	City of Columbus—(Muscogee County Consolidated Government).
	Approximately 400 feet upstream of Benning Drive	+227	+228	
Lindsey Creek	At the confluence with Lower Bull Creek	+241	+242	City of Columbus—Muscogee County (Consolidated Government).
	Approximately 440 feet upstream of Morris Road	+241	+242	
Lower Bull Creek	At the confluence with Chattahoochee River	+227	+228	City of Columbus—Muscogee County (Consolidated Government).
	Approximately 850 feet upstream of Cusseta Road	+227	+228	
Upper Bull Creek	Just upstream of Flood Control Dam No. 1	+406	+404	City of Columbus—Muscogee County (Consolidated Government).
	Approximately 2,660 feet upstream Alternate U.S. Highway 27/State Highway 85.	+406	+405	
Weracoba Creek	At the confluence with Lower Bull Creek	+227	+228	City of Columbus—Muscogee County (Consolidated Government).
	At U.S. Highway 27/Victory Drive	+227	+228	

* National Geodetic Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
+ North American Vertical Datum.				
ADDRESSES				
City of Columbus				
Maps are available for inspection at the Department of Engineering, 420 Tenth Street, Second Floor, Columbus, Georgia.				
Send Comments to The Honorable Robert S. Poydasheff, Mayor, City of Columbus, 100 Tenth Street, Sixth Floor, Government Center Tower, Columbus, Georgia 13901.				
Newton County, Georgia and Incorporated Areas				
Town Branch (Rogers Branch).	Approximately 200 feet upstream of confluence with Dried Indian Creek.	+661	+662	City of Covington.
	Approximately 710 feet downstream of Rebecca Street.	+661	+662	
* National Geodetic Vertical Datum. # Depth in feet above ground. + North American Vertical Datum.				
ADDRESSES				
City of Covington				
Maps are available for inspection at 2194 Emory Street, NW., Covington, Georgia.				
Send Comments to The Honorable Sam Ramsey, Mayor, City of Covington, 2194 Emory Street, NW., Covington, Georgia 30014.				

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 5, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17272 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7468]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Walker County Alabama, and Incorporated Areas				
Lost Creek	Approximately 400 feet upstream of BSNF Railway	*404	+406	Walker County (Unincorporated Areas)
	Approximately 2,500 feet downstream of South Pine Street.	*409	+411	

Depth in feet above ground.
*National Geodetic Vertical Datum.
+National American Vertical Datum.

ADDRESSES
Unincorporated Areas of Walker County

Maps are available for inspection at Walker County Engineering Department, 1801 Third Avenue, Jasper, AL 35501.

Send comments to Mrs. Rita Nichols, Office of Water Resources, P.O. Box 5690, Montgomery, AL 36103–5690.

Boone County, Kentucky and Incorporated Areas				
Ohio River	At confluence of Dry Creek	*495	+495	Boone County (Unincorporated Areas).
	At confluence of Big Bone Creek	*479	+478	

Depth in feet above ground.
*National Geodetic Vertical Datum.
+National American Vertical Datum.

ADDRESSES
Unincorporated Areas of Boone County

Maps are available for inspection at the Boone County Planning Commission, Boone County Administration Building, 3rd Floor, 2950 Washington Street, Burlington, KY 41005.

Send comments to the Honorable Anthony W. Frohlich, Mayor, Boone County, 6025 Rogers Lane, Suite 444, Burlington, KY 41005.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17273 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7674]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or

pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. * Elevation in feet (NGVD) +Elevation in feet (NAVD)	
				Existing	Modified
City of Durham, North Carolina					
North Carolina	City of Durham, Durham County.	Third Fork Creek Tributary	At the confluence with Third Fork Creek Tributary C.	+275	+273
			Approximately 260 feet upstream of Sherbon Drive.	None	+328
		Third Fork Creek Tributary A.	Approximately 1,700 feet upstream of the confluence with Third Fork Creek.	+251	+252
			Approximately 200 feet upstream of Southpoint Crossing Drive.	+284	+291
		Third Fork Creek Tributary C.	Approximately 50 feet downstream of Hope Valley Road.	+259	+258
			Approximately 250 feet upstream of Princeton Avenue.	None	+319
		Third Fork Creek Tributary D.	Approximately 1,100 feet upstream of the confluence with Third Fork Creek.	+255	+256
			Approximately 200 feet upstream of Morningside Drive.	None	+288
		Third Fork Creek Tributary E.	Approximately 300 feet upstream of the confluence with Third Fork Creek.	+289	+290
			Approximately 250 feet upstream of Ward Street.	None	+332

ADDRESSES

Maps are available for inspection at the Durham City Hall, Storm Water Services Division, 101 City Hall Plaza, Durham, North Carolina.

Send comments to The Honorable William Bell, Mayor of the City of Durham, 101 City Hall Plaza, Durham, North Carolina 27701.

Guam					
Guam		Agana River	At downstream side of Marine Drive (Route 1).	*11	*7
			Approximately 350 feet upstream of O'Brien Drive.	*14	*13

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Maps are available for inspection at the Guam Department of Public Works, Government of Guam, 542 North Marine Drive, Building A, Tamuning, Guam.

Send comments to The Honorable Felix P. Camacho, Governor of Guam, Office of the Governor, P.O. Box 2950, Hagåtña, Guam 96932.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17278 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7672]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security, Mitigation Division.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, flood insurance, reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Grafton County, New Hampshire and Incorporated Areas				
Ammonoosuc River	At confluence with Connecticut River	None	*428	Towns of Haverhill, Lisbon, Landaff, and Bethlehem.
	Approximately 1.07 miles upstream of dam in the Town of Littleton.	None	*878	
Canaan Street Lake	Entire shoreline	None	*1,146	Town of Canaan.
Connecticut River	Approximately 2.85 miles downstream of State Route 25 (Bradford -Piermont bridge).	None	*411	Town of Piermont.
	Approximately 1.48 miles downstream of Bedell Covered Bridge.	None	*414	
Eastman Pond	Entire shoreline	None	*1,110	Town of Enfield.
Hewes Brook	Approximately 1,700 feet downstream of upstream crossing of Goose Pond Road.	None	*696	Town of Hanover.
	At downstream side of upstream crossing of Goose Pond Road.	None	*706	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Mirror Lake	Entire shoreline	None	*947	Town of Canaan, Town of Orange.
Pemigewasset River	Approximately 1.41 miles upstream of confluence of Webster Pond Outlet.	None	*476	Town of Ashland.
	Approximately 1.25 miles upstream of confluence of Webster Pond Outlet.	None	*483	
Squam Lake	Entire shoreline	None	*565	Town of Holderness.

ADDRESSES

Town of Ashland

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Glenn Dion, Chairman of the Town of Ashland Board of Selectmen, 20 Highland Street, Ashland, New Hampshire 03217.

Town of Bethlehem

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Ms. Sandy Laleme, Chairperson for the Town of Bethlehem Board of Selectmen, P.O. Box 189, Bethlehem, New Hampshire 03574.

Town of Canaan

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Dana I. Hadley, Canaan Town Administrator, P.O. Box 38, Canaan, New Hampshire 03741.

Town of Enfield

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Steven P. Schneider, Enfield Town Manager, P.O. Box 373, Enfield, New Hampshire 03748.

Town of Hanover

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Ms. Julia Griffin, Hanover Town Manager, P.O. Box 483, Hanover, New Hampshire 03755.

Town of Haverhill

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Glenn E. English, Haverhill Town Manager, 2975 Dartmouth College Highway, Route 10, North Haverhill, New Hampshire 03774.

Town of Holderness

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Walter Johnson, Holderness Town Administrator, P.O. Box 203, Holderness, New Hampshire 03245–0203.

Town of Landiff

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Michael Ransmeier, Chairman of the Town of Landaff Board of Selectmen, P.O. Box 125, Landaff, New Hampshire 03585.

Town of Lisbon

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Reagan Pride, Chairman of the Town of Lisbon Board of Selectmen, 46 School Street, Lisbon, New Hampshire 03585.

Town of Orange

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Charles Sova, Chairman of the Town of Orange Board of Selectmen, P.O. Box 37, Canaan, New Hampshire 03741.

Town of Piermont

Maps are available for inspection on the GRANIT's (Geographically Referenced Analysis and Information Transfer System) website at *http://www.granit.sr.unh.edu/dfirms*.

Send comments to Mr. Jean Daley, Chairman of the Town of Piermont Board of Selectmen, Library Building, Route 10, Piermont, New Hampshire 03779.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Caldwell County, North Carolina and Incorporated Areas				
Abingdon Creek	Approximately 940 feet upstream of Huffman Road	None	+1,089	Unincorporated Areas of Caldwell County.
	Approximately 325 feet upstream of M.W. Setzer Road.	None	+1,098	
Amos Creek	At the confluence with Mulberry Creek	None	+1,426	Unincorporated Areas of Caldwell County.
	Approximately 1.4 miles upstream of the confluence with Mulberry Creek.	None	+1,554	
Angley Creek	Approximately 300 feet upstream of the confluence with Gunpowder Creek.	None	+1,178	City of Lenoir, Unincorporated Areas of Caldwell County.
	Approximately 600 feet upstream of Southeast Starcross Road.	None	+1,252	
Angley Creek Tributary 1	At the confluence with Angley Creek	None	+1,200	City of Lenoir, Unincorporated Areas of Caldwell County.
	Approximately 1,900 feet upstream of Southeast Starcross Road.	None	+1,294	
Anthony Creek	At the confluence with Prong Creek	None	+1,423	Unincorporated Areas of Caldwell County.
	Approximately 1.4 miles upstream of the confluence with Prong Creek.	None	+1,753	
Billy Branch	At the confluence with Gunpowder Creek	None	+1,037	Unincorporated Areas of Caldwell County, Town of Granite Falls.
	Approximately 0.6 mile upstream of North Highland Avenue.	None	+1,161	
Blairs Fork Creek	At the confluence with Lower Creek	+1,075	+1,073	City of Lenoir, Unincorporated Areas of Caldwell County.
	Approximately 750 feet upstream of Parson's Park Drive.	None	+1,206	
Boone Fork	At the confluence with Mulberry Creek	None	+1,219	Unincorporated Areas of Caldwell County.
	Approximately 1.2 miles upstream of the confluence with Mulberry Creek.	None	+1,315	
Bristol Creek	Approximately 450 feet downstream of the Burke/Caldwell County boundary.	None	+1,135	Unincorporated Areas of Caldwell County.
	Approximately 100 feet downstream of the Burke/Caldwell County boundary.	None	+1,144	
Camp Creek	At the confluence with Wilson Creek	None	+1,449	Unincorporated Areas of Caldwell County.
	At the confluence with Harper Creek	None	+1,555	
Catawba River	At the Alexander/Caldwell County boundary	None	+936	Unincorporated Areas of Caldwell County, City of Hickory, Town of Granite Falls, Town of Sawmills.
	Approximately 2,000 feet upstream of Burke/Caldwell County boundary.	None	+1,005	
Celia Creek	At the confluence with Husband Creek	None	+1,042	Unincorporated Areas of Caldwell County.
	Approximately 1.0 mile upstream of Celia Creek Road (State Road 1327).	None	+1,168	
Cold Water Creek	At the confluence with Johns River	None	+1,244	Unincorporated Areas of Caldwell County.
	Approximately 1.7 miles upstream of the confluence with Johns River.	None	+1,849	
Craig Creek	At the confluence with Wilson Creek	None	+1,394	Unincorporated Areas of Caldwell County.
	Approximately 1.9 miles upstream of the confluence with Wilson Creek.	None	+1,770	
Estes Mill Creek	At the confluence with Wilson Creek	None	+1,498	Unincorporated Areas of Caldwell County.
	Approximately 1.2 miles upstream of the confluence with Wilson Creek.	None	+1,656	
Fiddle Creek	At the confluence with Mulberry Creek	None	+1,397	Unincorporated Areas of Caldwell County.
	Approximately 1,600 feet upstream of the confluence with Mulberry Creek.	None	+1,437	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Franklin Branch	At the confluence with Johns River	+1,107	+1,108	Unincorporated Areas of Caldwell County.
	Approximately 1,500 feet upstream of the confluence with Franklin Branch Tributary 1.	None	+1,222	
Franklin Branch Tributary 1	At the confluence with Franklin Branch	None	+1,199	Unincorporated Areas of Caldwell County.
	Approximately 1,540 feet upstream of the confluence with Franklin Branch.	None	+1,229	
Freemason Creek	Approximately 1.0 mile upstream of the confluence with Catawba River.	None	+1,004	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 250 feet upstream of Stamey Road	None	+1,132	
Tributary 1	At the confluence with Freemason Creek	None	+1,013	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 1.5 miles upstream of the confluence with Freemason Creek.	None	+1,102	
Tributary 1A	At the confluence with Freemason Creek Tributary 1.	None	+1,023	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 1,700 feet upstream of Hickory Nut Ridge Road.	None	+1,058	
Tributary 2	At the confluence with Freemason Creek	None	+1,056	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 0.8 mile upstream of Horseshoe Bend Road.	None	+1,128	
Tributary 2A	At the confluence with Freemason Creek Tributary 2.	None	+1,082	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 650 feet upstream of Lafayette Avenue.	None	+1,163	
Ginger Creek	At the confluence with Middle Little River	None	+1,388	Unincorporated Areas of Caldwell County.
	Approximately 0.7 mile upstream of Draco Road	None	+1,459	
Tributary 1	At the confluence with Ginger Creek	None	+1,401	Unincorporated Areas of Caldwell County.
	Approximately 1.3 miles upstream of Scout Road	None	+1,731	
Greasy Creek	At the confluence with Lower Creek	+1,065	+1,062	Unincorporated Areas of Caldwell County, City of Lenoir.
	Approximately 1,500 feet upstream of the confluence with Lower Creek.	+1,067	+1,066	
Gunpowder Creek	At the confluence with Catawba River	None	+936	Unincorporated Areas of Caldwell County, City of Lenoir.
	Approximately 700 feet upstream of Southeast Applegate Court.	None	+1,321	
Tributary 1	At the confluence with Gunpowder Creek	None	+1,073	Unincorporated Areas of Caldwell County.
	Approximately 1.8 miles upstream of the confluence with Gunpowder Creek.	None	+1,186	
Tributary 2	At the confluence with Gunpowder Creek	None	+1,089	Unincorporated Areas of Caldwell County.
	Approximately 50 feet downstream of Christie Road (State Road 1717).	None	+1,117	
Tributary 2A	At the confluence with Gunpowder Creek Tributary 2.	None	+1,090	Unincorporated Areas of Caldwell County, Town of Hudson.
	Approximately 1,600 feet upstream of Christie Road.	None	+1,123	
Tributary 3	At the confluence with Gunpowder Creek	None	+1,107	Unincorporated Areas of Caldwell County, Town of Hudson.
	Approximately 0.4 mile upstream of the confluence with Gunpowder Creek.	None	+1,158	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 4	Approximately 750 feet upstream of the confluence with Gunpowder Creek.	+1,157	+1,158	Town of Hudson.
	Approximately 0.6 mile upstream of the confluence with Gunpowder Creek.	None	+1,220	
Tributary 5	Approximately 600 feet upstream of the confluence with Gunpowder Creek.	+1,212	+1,213	City of Lenoir .
	Approximately 0.5 mile upstream of Hickory Boulevard.	None	+1,280	
Tributary 6	Approximately 700 feet upstream of the confluence with Gunpowder Creek.	+1,241	+1,242	City of Lenoir .
	Approximately 1,750 feet upstream of the railroad ..	None	+1,298	
Harper Creek	At the confluence with Camp Creek	None	+1,555	Unincorporated Areas of Caldwell County.
	At the Avery/Caldwell County boundary	None	+1,801	
Hayes Mill Creek	Approximately 1,500 feet upstream of the confluence with Catawba River.	None	+1,003	City of Lenoir, Town of Granite Falls.
	Approximately 700 feet upstream of the confluence of Hayes Mill Creek Tributary 2.	None	+1,120	
Tributary 1	At the confluence with Hayes Mill Creek	None	+1,055	Unincorporated Areas of Caldwell County, Town of Sawmills.
	Approximately 1,700 feet upstream of the confluence with Hayes Mill Creek.	None	+1,088	
Tributary 2	At the confluence with Hayes Mill Creek	None	+1,113	Town of Sawmills.
	Approximately 1,900 feet upstream of the confluence with Hayes Mill Creek.	None	+1,157	
Husband Creek	Approximately 0.5 mile upstream of the confluence with Lower River.	None	+1,031	Unincorporated Areas of Caldwell County, Town of Gamewell.
	Approximately 1,900 feet upstream of Rocky Road (State Road 1143).	None	+1,202	
Tributary 1	At the confluence with Husband Creek	None	+1,066	Unincorporated Areas of Caldwell County.
	Approximately 250 feet downstream of the Fleming Chapel (State Road 1322) Church Road.	None	+1,132	
Tributary 2	At the confluence with Husband Creek	None	+1,096	Unincorporated Areas of Caldwell County
	Approximately 750 feet upstream of Crooked Creek Way.	None	+1,124	
Johns River	At the Burke/Caldwell County boundary	None	+1,053	Unincorporated Areas of Caldwell County
	Approximately 3.5 miles upstream of the confluence of Thunderhole Creek.	None	+2,346	
Laurel Creek	At the confluence with Wilson Creek	None	+1,627	Unincorporated Areas of Caldwell County
	Approximately 1.1 miles upstream of the confluence with Wilson Creek.	None	+1,986	
Little Creek	At the confluence with Upper Little River	None	+1,177	Unincorporated Areas of Caldwell County
	Approximately 1.4 miles upstream of Cove Mountain Lane.	None	+1,321	
Little Gunpowder Creek (near City of Lenoir).	Approximately 700 feet upstream of Southwest Walt Arney Road.	None	+1,218	Town of Cajahs Mountain.
	Approximately 1,100 feet upstream of Connelly Springs Road.	None	+1,268	
Tributary 1 (near Town of Hudson).	At the confluence with Little Gunpowder Creek (near Town of Hudson).	None	+1,183	Unincorporated Areas of Caldwell County, Town of Hudson.
	Approximately 50 feet upstream of Madison MHP Drive.	None	+1,249	
Tributary 2 (near Town of Hudson).	At the confluence with Little Gunpowder Creek (near Town of Hudson).	None	+1,194	Unincorporated Areas of Caldwell County, Town of Hudson.
	Approximately 0.5 mile upstream of Chickadee Trail Place.	None	+1,261	
Little Mulberry Creek 1	Approximately 1,100 feet upstream of the confluence with Mulberry Creek.	+1,132	+1,131	Unincorporated Areas of Caldwell County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 350 feet downstream of NC 90	None	+1,225	
Creek 2	At the confluence with Mulberry Creek	None	+1,148	Unincorporated Areas of Caldwell County.
	Approximately 0.4 mile upstream of Shallow Creek Road (State Road 1350).	None	+1,234	
Lost Cove Creek	At the confluence with Wilson Creek	None	+1,563	Unincorporated Areas of Caldwell County.
	At Avery/Caldwell County boundary	None	+1,580	
Lower Creek	At the Burke/Caldwell County boundary	None	+1,026	Unincorporated Areas of Caldwell County.
	Approximately 1,900 feet upstream of Cedar Rock Circle (State Road 1706).	+1,130	+1,131	
Tributary 1	At the confluence with Lower Creek	+1,101	+1,099	Unincorporated Areas of Caldwell County, City of Lenoir.
	Approximately 0.7 mile upstream of Southeast Haigler Road.	None	+1,536	
McRory Creek	At the confluence with Upper Little River	None	+1,211	Unincorporated Areas of Caldwell County.
	Approximately 0.6 mile upstream of McRary Creek Road (State Road 1721).	None	+1,285	
Middle Little River	At the Alexander/Caldwell County boundary	None	+1,098	Unincorporated Areas of Caldwell County.
	Approximately 0.5 mile upstream of Brush Mountain Road (State Road 1733).	None	+1,419	
Tributary 3	At the confluence with Middle Little River	None	+1,222	Unincorporated Areas of Caldwell County.
	Approximately 1,500 feet upstream of U.S. 64/Taylorsville Road.	None	+1,257	
Tributary 4	At the confluence with Middle Little river	None	+1,314	Unincorporated Areas of Caldwell County.
	Approximately 1,000 feet upstream of Duck Creek Road (State Road 1730).	None	+1,360	
Tributary 5	At the confluence with Middle Little River	None	+1,316	Unincorporated Areas of Caldwell County.
	Approximately 0.5 mile upstream of the confluence with Middle Little River.	None	+1,362	
Mill Creek	At the confluence with Upper Little River	None	+936	Unincorporated Areas of Caldwell County.
	Approximately 1.0 mile upstream of Petra Mill Road (State Road 1740).	None	+1,053	
Morris Creek	At the confluence with Upper Little River	None	+1,132	Unincorporated Areas of Caldwell County.
	Approximately 600 feet upstream of Sheriffs Road (State Road 1730).	None	+1,287	
Mountain Run	At the confluence with Upper Little River	None	+1,185	Unincorporated Areas of Caldwell County.
	Approximately 150 feet upstream of Fox Road	None	+1,321	
Mulberry Creek	Approximately 500 feet upstream of the confluence of Little Mulberry Creek 1.	None	+1,131	Unincorporated Areas of Caldwell County.
	Approximately 0.7 mile upstream of the confluence of Amos Creek.	None	+1,514	
Pilot Branch	At the confluence with Upper Little River	None	+1,145	Unincorporated Areas of Caldwell County.
	Approximately 400 feet upstream of Burns Road (State Road 1749).	None	+1,206	
Prong Creek	At the confluence with Johns River	None	+1,332	Unincorporated Areas of Caldwell County.
	At the confluence of Racket Creek	None	+1,418	
Racket Creek	At the confluence with Prong Creek	None	+1,418	Unincorporated Areas of Caldwell County.
	Approximately 4.3 miles upstream of the confluence with Prong Creek.	None	+2,284	
Raider Camp Creek	At the confluence with Harper Creek and Camp Creek.	None	+1,555	Unincorporated Areas of Caldwell County.
	Approximately 1,800 feet upstream of the confluence with Harper Creek.	None	+1,638	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Rock Creek	At the confluence with Upper Little River	None	+1,018	Unincorporated Areas of Caldwell County.
	Approximately 1,400 feet upstream of State Road 1002.	None	+1,146	
Rush Branch	At the confluence with Mulberry Creek	None	+1,344	Unincorporated Areas of Caldwell County.
	Approximately 0.9 mile upstream of the confluence with Mulberry Creek.	None	+1,406	
Silver Creek	At the confluence with Gunpowder Creek	None	+936	Unincorporated Areas of Caldwell County, Town of Granite Falls.
	Approximately 0.6 mile upstream of Falls Avenue	None	+1,078	
Spain Hour Creek	At the confluence with Blairs Fork Creek	+1,122	+1,121	City of Lenoir.
	Approximately 1,800 feet upstream of Blowing Rock Boulevard.	+None	+1,176	
Stratford Creek	At the confluence with Catawba River	None	+1,005	Unincorporated Areas of Caldwell County.
	Approximately 0.7 mile upstream of Baton School Road (State Road 1139).	None	+1,110	
Tributary 1	At the confluence with Stratford Creek	None	+1,023	Unincorporated Areas of Caldwell County.
	Approximately 1,800 feet upstream of Baton School Road (State Road 1139).	None	+1,055	
Thorps Creek	At the confluence with Wilson Creek	None	+1,498	Unincorporated Areas of Caldwell County.
	Approximately 2,050 feet upstream of the confluence with Wilson Creek.	None	+1,540	
Thunderhole Creek	At the confluence with Johns River	None	+1,430	Unincorporated Areas of Caldwell County.
	Approximately 0.4 mile upstream of the confluence of New Years Creek.	None	+1,930	
Upper Little River	At the confluence with Catawba River	None	+936	Unincorporated Areas of Caldwell County.
	Approximately 0.7 mile upstream of Teaberry Lane	None	+1,294	
Tributary 1	At the confluence with Upper Little River	None	+985	Unincorporated Areas of Caldwell County.
	Approximately 0.5 mile upstream of Charlie Little Road (State Road 1741).	None	+1,127	
Walnut Bottom Creek	At the confluence with Johns River	None	+1,316	Unincorporated Areas of Caldwell County.
	Approximately 0.6 mile upstream of the confluence with Johns River.	None	+1,371	
Wilson Creek	Approximately 1.1 miles upstream of Adako Road (State Road 1337).	None	+1,106	Unincorporated Areas of Caldwell County.
	Approximately 1,000 feet upstream of Avery/Caldwell County boundary.	None	+1,681	
Zacks Fork Branch	At the confluence with Zacks Fork Creek	+1,106	+1,104	Unincorporated Areas of Caldwell County.
	Approximately 1,350 feet upstream of the confluence with Zacks Fork Creek.	+1,106	+1,105	
Zacks Fork Creek	Approximately 800 feet downstream of Northeast Georgetown Road.	+1,040	+1,039	City of Lenoir, Unincorporated Areas of Caldwell County.
	At the confluence with Lower Creek	+1,092	+1,088	
Tributary 1	Approximately 400 feet upstream of the confluence with Zacks Fork Creek.	+1,157	+1,156	City of Lenoir, Unincorporated Areas of Caldwell County.
	Approximately 1.2 miles upstream of the confluence with Zacks Fork Creek.	None	+1,268	

ADDRESSES

City of Hickory

Maps are available for inspection at the Hickory City Hall, 76 North Center Street, Hickory, North Carolina.

Send comments to The Honorable G. Rudy Wright, Jr., Mayor of the City of Hickory, P.O. Box 398, Hickory, North Carolina 28603.

City of Lenoir

Maps are available for inspection at the Lenoir City Hall, 801 West Avenue, Northwest, 3rd Floor, Lenoir, North Carolina.

Send comments to The Honorable David Barlow, Mayor of the City of Lenoir, City Hall Offices, Lenoir, North Carolina 28645.

Town of Cajahs Mountain

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	

Maps are available for inspection at the Cajahs Mountain Town Hall, 1800 Connelly Springs Road, Lenoir, North Carolina.

Send comments to Mr. Bill Oxford, Chairman of the Town of Cajahs Mountain Board of Aldermans, 1800 Connelly Springs Road, Lenoir, North Carolina 28645.

Town of Gamewell

Maps are available for inspection at the Gamewell Town Hall, 2750 Old Morganton Road, Lenoir, North Carolina.

Send comments to The Honorable Jack Roberts, Mayor of the Town of Gamewell, 2750 Old Morganton Road, Lenoir, North Carolina 28645.

Town of Granite Falls

Maps are available for inspection at the Granite Falls Town Hall, 30 Park Square, Granite Falls, North Carolina.

Send comments to The Honorable Barry Hayes, Mayor of the Town of Granite Falls, P.O. Drawer 10, Granite Falls, North Carolina 28630.

Town of Hudson

Maps are available for inspection at the Hudson Town Hall, 550 Central Street, Hudson, North Carolina.

Send comments to The Honorable Bill Beane, Mayor of the Town of Hudson, P.O. Box 457, Hudson, North Carolina 28638.

Town of Sawmills

Maps are available for inspection at the Sawmills Town Hall, 4076 U.S. Highway 321A, Sawmills, North Carolina.

Send comments to The Honorable Bobby Austin, Mayor of the Town of Sawmills, 4076 U.S. Highway 321A, Sawmills, North Carolina 28630.

Unincorporated Areas of Caldwell County

Maps are available for inspection at the Caldwell County Courthouse, 1051 Harper Avenue, Lenoir, North Carolina.

Send comments to Mr. William White, Caldwell County Manager, P.O. Box 2200, Lenoir, North Carolina 28645.

Gaston County, North Carolina and Incorporated Areas

Abbey Creek	At the upstream side of Hazeline Avenue	+574	+577	Unincorporated Areas of Gaston County, City of Belmont.
	Approximately 350 feet upstream of Interstate 85	None	+701	
Abernathy Creek	At the confluence with Crowders Creek	None	+707	Unincorporated Areas of Gaston County, City of Kings Mountain.
	Approximately 1.3 miles upstream of Interstate 85	None	+805	
Beaverdam Creek	Approximately 700 feet upstream of the confluence with South Fork Catawba River.	None	+716	Unincorporated Areas of Gaston County, City of Cherryville, City of High Shoals.
	Approximately 500 feet downstream of Dallas Cherryville Highway (State Road 279).	None	+834	
Tributary 1	Approximately 350 feet upstream of the confluence with Beaverdam Creek.	None	+842	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 1,350 feet upstream of the confluence of Beaverdam Creek Tributary 1A.	None	+870	
Tributary 1A	At the confluence with Beaverdam Creek Tributary 1.	None	+857	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 1,590 feet upstream of the confluence with Beaverdam Creek Tributary 1.	None	+876	
Blackwood Creek	Approximately 700 feet downstream of the North Carolina/South Carolina State boundary.	None	+571	Unincorporated Areas of Gaston County, City of Belmont, City of Gastonia, City of Mount Holly.
	Approximately 0.9 mile upstream of the confluence with Crowder Creek.	+674	+673	
Burton Branch	Approximately 1,150 feet upstream of the confluence with Long Creek.	+662	+663	Unincorporated Areas of Gaston County, City of Gastonia, Town of Ranlo.
	Approximately 0.4 mile upstream of Ridge Avenue	None	+720	
Carpenters Branch	At the confluence with Little Long Creek	None	+735	Unincorporated Areas of Gaston County, Town of Dallas.
	Approximately 0.9 mile upstream of the confluence with Little Long Creek.	None	+774	
Catawba Creek	Approximately 500 feet downstream of Gaston County, North Carolina/York County, South Carolina State boundary.	None	+571	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 830 feet downstream of Union New Hope Road (State Road 2435).	None	+588	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
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Tributary	At the confluence with Catawba Creek	None	+571	Unincorporated Areas of Gaston County.
	Approximately 500 feet downstream of Catawba Cove Drive (State Road 2650).	None	+583	
Tributary 1	At the confluence with Catawba Creek	None	+571	Unincorporated Areas of Gaston County.
	Approximately 1.1 miles upstream of the confluence with Catawba Creek.	None	+590	
Tributary 2	At the confluence with Catawba Creek	None	+580	Unincorporated Areas of Gaston County.
	Approximately 60 feet upstream of Rufus Ratchford Road (State Road 2431).	None	+601	
Tributary 3	Approximately 400 feet upstream of the confluence with Catawba Creek.	None	+611	Unincorporated Areas of Gaston County.
	Approximately 130 feet downstream of Driftwood Drive (State Road 2840).	None	+636	
Tributary 4	Approximately 300 feet upstream of the confluence with Catawba Creek.	None	+626	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 0.8 mile upstream of Woodbridge Drive.	None	+753	
Catawba River	Approximately 1.6 miles upstream of State Highway 16.	+655	+656	Unincorporated Areas of Gaston County, City of Mount Holly.
	At the Lincoln/Gaston County boundary	None	+665	
Tributary 1	Approximately 1,005 feet upstream of the confluence with Catawba River.	None	+576	Unincorporated Areas of Gaston County, City of Mount Holly.
	Approximately 230 feet downstream of Beatty Drive	None	+643	
Tributary 2	Approximately 1,300 feet upstream of the confluence with Catawba River.	None	+576	Unincorporated Areas of Gaston County, City of Mount Holly.
	Approximately 600 feet upstream of Missouri Lane	None	+585	
Tributary 3	Approximately 925 feet upstream of the confluence with Catawba River.	+580	+581	Unincorporated Areas of Gaston County, City of Mount Holly.
	Approximately 1.1 miles upstream of the Railroad	None	+677	
Coley Creek	Approximately 100 feet downstream of Colt Thornburg Road (State Road 1802).	None	+667	Unincorporated Areas of Gaston County.
	Approximately 40 feet downstream of Cloninger Road (State Road 1805).	None	+673	
Crowders Creek	At the confluence with South Fork Crowders Creek	None	+639	Unincorporated Areas of Gaston County, City of Gastonia, City of Kings Mountain.
	Approximately 1.0 mile upstream of the confluence of McGill Creek.	None	+806	
Durharts Creek Tributary 1	Approximately 350 feet upstream of the confluence with Durharts Creek.	+591	+594	Unincorporated Areas of Gaston County, Town of Cramerton.
	Approximately 0.7 mile upstream of the confluence with Durharts Creek.	None	+636	
Dutchmans Creek	Approximately 50 feet upstream of the confluence of South Stanley Creek.	None	+597	Unincorporated Areas of Gaston County, City of Mount Holly.
	At the confluence of Leepers Creek and Killian Creek.	None	+624	
Ferguson Branch	At the confluence with Crowders Creek	None	+657	Unincorporated Areas of Gaston County.
	Approximately 1.0 mile upstream of the confluence with Ferguson Branch.	None	+689	
First Creek	Approximately 950 feet upstream of the confluence with Abernathy Creek.	None	+771	Unincorporated Areas of Gaston County, City of Bessemer City.
	Approximately 0.6 mile upstream of the confluence with Abernathy Creek.	None	+779	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
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Fites Creek	Approximately 1.0 mile upstream of Perfection Avenue.	None	+675	Unincorporated Areas of Gaston County.
	Approximately 1.6 miles upstream of Perfection Avenue.	None	+701	
Tributary 1	Approximately 150 feet upstream of the confluence with Fites Creek.	None	+609	Unincorporated Areas of Gaston County, City of Belmont, City of Mount Holly.
	Approximately 900 feet upstream of Acme Road (State Road 2032).	None	+694	
Tributary 1A	At the confluence with Fites Creek Tributary 1	None	+649	Unincorporated Areas of Gaston County, City of Belmont, City of Mount Holly.
	Approximately 0.4 mile upstream of the confluence with Fites Creek Tributary 1.	None	+671	
Gilliam Creek	Approximately 150 feet downstream of the Cleveland/Gaston County boundary.	None	+802	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 1.3 miles upstream of the confluence of Gilliam Creek Tributary 2.	None	+856	
Tributary 1	Approximately 150 feet downstream of the confluence of Gilliam Creek Tributary 1A.	None	+800	Unincorporated Areas of Gaston County, City of Cherryville.
	At the downstream side of West Colonial Drive	None	+863	
Tributary 1A	At the confluence with Gilliam Creek Tributary 1	None	+801	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 0.4 mile upstream of the confluence with Gilliam Creek Tributary 1.	None	+832	
Tributary 2	At the confluence with Gilliam Creek	None	+810	Unincorporated Areas of Gaston County.
	Approximately 160 feet upstream of the Cleveland/Gaston County boundary.	None	+812	
Hoyle Creek	Approximately 50 feet upstream of Old Willis School Road (State Road 1836).	None	+656	Unincorporated Areas of Gaston County, City of High Shoals.
	Approximately 900 feet upstream of the confluence of Hoyle Creek Tributary 1.	None	+745	
Indian Creek	At the Lincoln/Gaston County boundary	None	+781	Unincorporated Areas of Gaston County, City of Cherryville.
	At the confluence of Lick Fork Creek	None	+790	
Tributary 3	At the confluence with Indian Creek	None	+785	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 0.7 mile upstream of Robert Road	None	+819	
Johnson Creek	At the confluence with Catawba River	None	+660	Unincorporated Areas of Gaston County.
	At the Lincoln/Gaston County boundary	None	+664	
Killian Creek	At the confluence with Dutchmans Creek and Leepers Creek.	None	+624	Unincorporated Areas of Gaston County.
	At the Lincoln/Gaston County boundary	None	+635	
Leepers Creek	At the confluence with Dutchmans Creek and Killian Creek.	None	+624	Unincorporated Areas of Gaston County.
	At the Lincoln/Gaston County boundary	None	+635	
Lick Fork Creek	At the confluence with Indian Creek	None	+790	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 125 feet downstream of Vernon Street.	None	+878	
Tributary 1	At the confluence with Lick Fork Creek	None	+806	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 1.8 miles upstream of the confluence with Lick Fork Creek.	None	+894	
Little Beaverdam Creek	At the confluence with Beaverdam Creek	None	+764	Unincorporated Areas of Gaston County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 200 feet downstream of Tryon Courthouse Road.	None	+899	
Little Hoyle Creek	At the confluence with Hoyle Creek	None	+666	Unincorporated Areas of Gaston County.
	Approximately 1.1 miles upstream of Rhyne Road	None	+711	
Little Long Creek	Approximately 460 feet downstream of the confluence of Carpenters Branch.	None	+734	Unincorporated Areas of Gaston County, Town of Dallas.
	Approximately 970 feet upstream of Puetts Chapel Road.	None	+859	
Long Creek	Approximately 50 feet upstream of State Highway 274/Tryon Courthouse Road.	None	+773	Unincorporated Areas of Gaston County, City of Bessemer City.
	Approximately 0.5 mile upstream of Sunnyside Shady Rest Road (State Road 1409).	None	+906	
	Approximately 650 feet upstream of the confluence with Long Creek.	None	+759	Unincorporated Areas of Gaston County.
Tributary 6	Approximately 50 feet downstream of Bess Town Road.	None	+782	
	At the confluence with Long Creek Tributary 6	None	+770	Unincorporated Areas of Gaston County.
Tributary 6A	Approximately 0.7 mile upstream of the confluence with Long Creek Tributary 6.	None	+784	
	At the confluence with Long Creek Tributary 6	None	+773	Unincorporated Areas of Gaston County.
Tributary 6B	Approximately 130 feet downstream of Abel Road (State Road 1447).	None	+782	
Lutz Branch	Approximately 1,300 feet upstream of the confluence.	None	+685	Unincorporated Areas of Gaston County, City of High Shoals.
	At the Lincoln/Gaston County boundary	None	+738	
Mauney Creek	At the confluence with Hoyle Creek	None	+656	Unincorporated Areas of Gaston County, Town of Stanley.
	Approximately 190 feet downstream of Mauney Road.	None	+689	
McGill Branch	At the confluence with Crowders Creek	None	+647	Unincorporated Areas of Gaston County.
	Approximately 0.8 mile upstream of Lewis Road (State Road 1126).	None	+775	
McGill Creek	At the confluence with Crowders Creek	None	+770	Unincorporated Areas of Gaston County, City of Gastonia, City of Kings Mountain.
	Approximately 250 feet downstream of the Cleveland/Gaston County boundary.	None	+878	
Muddy Fork Tributary 5	Approximately 140 feet downstream of Doc Wehunt Road.	None	+818	Unincorporated Areas of Gaston County, City of Cherryville.
	Approximately 2,680 feet upstream of Doc Wehunt Road.	None	+843	
South Fork Catawba River Tributary 1.	Approximately 0.5 mile upstream of the confluence with South Fork Catawba River.	None	+571	Unincorporated Areas of Gaston County.
	Approximately 1.4 miles upstream of the confluence with South Fork Catawba River.	None	+571	
Tributary 2	Approximately 1,100 feet upstream of the confluence with South Fork Catawba River.	None	+584	Unincorporated Areas of Gaston County, City of Belmont, Town of McAdenville.
	Approximately 340 feet downstream of Fairway Highway.	None	+630	
South Fork Crowders Creek	At the Gaston County, North Carolina/York County, South Carolina State boundary..	None	+618	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 0.7 mile upstream of Lewis Road (State Route 1126).	None	+707	
Tributary 1	At the confluence with South Fork Crowders Creek	None	+619	Unincorporated Areas of Gaston County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 0.5 mile upstream of the confluence with South Fork Crowders Creek.	None	+628	
Tributary 2	At the confluence with South Fork Crowders Creek	None	+630	Unincorporated Areas of Gaston County.
	Approximately 200 feet upstream of the Gaston County, North Carolina/York County, South Carolina State boundary.	None	+633	
Tributary 4	At the confluence with South Fork Crowders Creek	None	+660	Unincorporated Areas of Gaston County.
	At the Gaston County, North Carolina/York County, South Carolina State boundary.	None	+664	
Tributary 5	At the confluence with South Fork Crowders Creek	None	+675	Unincorporated Areas of Gaston County.
	Approximately 0.9 mile upstream of Sparrow Springs Road (State Road 1125).	None	+705	
South Stanley Creek	Approximately 180 feet upstream of the confluence with Dutchmans Creek.	None	+597	Unincorporated Areas of Gaston County, City of Mount Holly, Town of Stanley.
	Approximately 650 feet upstream of the confluence of South Stanley Creek Tributary 1.	None	+650	
Tributary 1	At the confluence with South Stanley Creek	None	+645	Unincorporated Areas of Gaston County, Town of Stanley.
	Approximately 2,200 feet upstream of the Railroad	None	+738	
Stanley Creek	At the confluence with Dutchmans Creek	None	+600	Unincorporated Areas of Gaston County, City of Mount Holly, Town of Stanley.
	Approximately 1.5 miles upstream of Blacksnake Road.	None	+699	
Sulphur Branch	At the upstream side of Cherry Street	None	+707	Unincorporated Areas of Gaston County, City of High Shoals.
	Approximately 0.4 mile upstream of Ross Road	None	+816	
Taylors Creek	Approximately 900 feet upstream of Woodlawn Avenue.	None	+591	Unincorporated Areas of Gaston County, City of Mount Holly.
	Approximately 60 feet downstream of Lamplighter Lane (State Road 2171).	None	+681	
Tributary 1	At the confluence with Taylors Creek	None	+618	Unincorporated Areas of Gaston County.
	Approximately 0.6 mile upstream of the confluence of Taylors Creek Tributary 1A.	None	+656	
Tributary 1A	At the confluence with Taylors Creek Tributary 1	None	+635	Unincorporated Areas of Gaston County.
	Approximately 0.4 mile upstream of the confluence with Taylors Creek Tributary 1.	None	+653	
Tributary A	At the confluence with South Fork Crowders Creek	None	+635	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 230 feet upstream of Huffman Road	None	+746	
Tributary B	At the confluence with Tributary A	None	+719	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 0.5 mile upstream of the confluence with Tributary A.	None	+784	
Tributary B–1	At the confluence with Tributary B	None	+737	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 1,840 feet upstream of the confluence with Tributary B.	None	+758	
Tributary L–4	Approximately 0.6 mile upstream of the confluence with Long Creek.	None	+682	Unincorporated Areas of Gaston County, Town of Dallas.
	Approximately 1,900 feet upstream of Old Dallas Highway.	None	+727	
Tributary L–4–2	At the confluence with Tributary L–4	None	+715	Town of Dallas.
	Approximately 300 feet upstream of West Robinson Street.	None	+744	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary R–1	At the confluence with Crowders Creek	+669	+665	Unincorporated Areas of Gaston County, City of Gastonia.
	Approximately 50 feet upstream of Torrence Road	+669	+670	
Tributary R–5	Approximately 1,050 feet upstream of the confluence with Crowders Creek.	+688	+689	Unincorporated Areas of Gaston County, City of Bessemer City, City of Gastonia.
	Approximately 0.5 mile upstream of Oates Road	+814	+823	
Unnamed Tributary 1 to Long Creek.	Approximately 750 feet upstream of the confluence with Long Creek.	+773	+774	Unincorporated Areas of Gaston County, City of Bessemer City.
	At the confluence with Long Creek	None	+774	
Unnamed Tributary to Tributary A.	At the confluence with Tributary A	None	+638	Unincorporated Areas of Gaston County.
	Approximately 0.5 mile upstream of the confluence with Tributary A.	None	+645	

ADDRESSES

City of Belmont

Maps are available for inspection at the City of Belmont Planning and Zoning Department, 37 North Main Street, Belmont, North Carolina.

Send comments to The Honorable Richard Boyce, Mayor of the City of Belmont, P.O. Box 431, Belmont, North Carolina 28012.

City of Bessemer City

Maps are available for inspection at the City of Bessemer City Hall, 132 West Virginia Avenue, Bessemer City, North Carolina.

Send comments to The Honorable Alan Farrif, Mayor of the City of Bessemer City, 132 West Virginia Avenue, Bessemer City, North Carolina 28016.

City of Cherryville

Maps are available for inspection at the Cherryville City Hall, 116 South Mountain Street, Cherryville, North Carolina.

Send comments to The Honorable Bob Austell, Mayor of the City of Cherryville, 116 South Mountain Street, Cherryville, North Carolina 28021.

City of Gastonia

Maps are available for inspection at the City of Gastonia Engineering Department, 150 South York Street, Gastonia, North Carolina.

Send comments to The Honorable Jennifer Stultz, Mayor of the City of Gastonia, P.O. Box 1748, Gastonia, North Carolina 28053.

City of High Shoals

Maps are available for inspection at the High Shoals City Hall, 101 Thompkins Street, High Shoals, North Carolina.

Send comments to The Honorable Fred Gilbert, Mayor of the City of High Shoals, P.O. Box 6, High Shoals, North Carolina 28077.

City of Kings Mountain

Maps are available for inspection at the Kings Mountain City Hall, 101 West Gold Street, Kings Mountain, North Carolina.

Send comments to The Honorable Rick Murphrey, Mayor of the City of Kings Mountain, P.O. Box 429, Kings Mountain, North Carolina 28086.

City of Lowell

Maps are available for inspection at the Lowell City Hall, 101 West First Street, Lowell, North Carolina.

Send comments to The Honorable Judy Horne, Mayor of the City of Lowell, P.O. Box 217, Lowell, North Carolina 28098.

City of Mount Holly

Maps are available for inspection at the Mount Holly City Hall, 131 South Main Street, Mount Holly, North Carolina.

Send comments to The Honorable Robert Whitt, Mayor of the City of Mount Holly, P.O. Box 406, Mount Holly, North Carolina 28120.

Town of Cramerton

Maps are available for inspection at the Cramerton Town Hall, 155 North Main Street, Cramerton, North Carolina.

Send comments to The Honorable Ronald Murphy, Mayor of the Town of Cramerton, 155 North Main Street, Cramerton, North Carolina 28032.

Town of Dallas

Maps are available for inspection at the Dallas Town Hall, 210 North Holland Street, Dallas, North Carolina.

Send comments to The Honorable Rick Coleman, Mayor of the Town of Dallas, 210 North Holland Street, Dallas, North Carolina 28034.

Town of McAdenville

Maps are available for inspection at the McAdenville Town Hall, 125 Main Street, McAdenville, North Carolina.

Send comments to The Honorable Jerry Hilton, Mayor of the Town of McAdenville, 127 Sanford Road, Gastonia, North Carolina 28056.

Town of Ranlo

Maps are available for inspection at the Ranlo Town Hall, 1624 Spencer Mountain Road, Gastonia, North Carolina.

Send comments to The Honorable Donald Clemmer, Mayor of the Town of Ranlo, 1624 Spencer Mountain Road, Gastonia, North Carolina 28054.

Town of Stanley

Maps are available for inspection at the Stanley Town Hall, 114 South Main Street, Stanley, North Carolina.

Send comments to The Honorable Judith Johnson, Mayor of the Town of Stanley, P.O. Box 279, Stanley, North Carolina 28164.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Unincorporated Areas of Gaston County				
Maps are available for inspection at the Gaston County Administration Office, 128 West Main Avenue, Gastonia, North Carolina.				
Send comments to Ms. Jan Winters, Gaston County Manager, 128 West Main Avenue, Gastonia, North Carolina 28053.				
Guilford County, North Carolina and Incorporated Areas				
Back Creek Tributary (Stream No. 90).	At the confluence with Back Creek	None	+595	Guilford County.
	Approximately 0.5 mile upstream of Sanitary Landfill Road.	None	+638	
Beaver Creek (Stream No. 83).	At the Alamance/Guilford County boundary	None	+635	Guilford County (unincorporated areas).
	At the Alamance/Guilford County boundary	None	+569	
Big Alamance Creek Tributary 8.	Approximately 900 feet upstream of the confluence with Big AlamanceCreek.	+658	+659	Guilford County (Unincorporated Areas), Town of Pleasant Garden.
	Approximately 100 feet upstream of Hagon Stone Park Road.	None	+712	
Boulding Branch	Approximately 50 feet upstream of Montileu Avenue.	None	+854	City of High Point.
	At North Centennial Street	None	+888	
Tributary 3.	Approximately 400 feet upstream of the confluence with Boulding Branch.	None	+798	City of High Point.
	Approximately 1,000 feet upstream of McGuinn Drive.	None	+849	
Brush Creek (Stream No. 54).	At the downstream side of Brass Eagle Loop	+780	+778	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1,550 feet upstream of Airport Center Drive.	None	+879	
Tributary	At the confluence with Brush Creek	+816	+814	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1.5 miles upstream of Airport Parkway.	None	+925	
Bull Run (Stream No. 28)	At the confluence with Deep River (Stream No. 1)	+705	+704	Guilford County (Unincorporated Areas), City of Greensboro, Town of Jamestown.
	Approximately 1,000 feet upstream of Ruffin Road	None	+845	
Copper Branch	Approximately 1,150 feet upstream of the confluence with Deep River (Stream No. 1).	None	+700	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 600 feet upstream of I-85	None	+822	
Deep River Tributary 26	Approximately 800 feet downstream of the Guilford/Randolph County boundary.	None	+701	Guilford County (Unincorporated Areas) .
	Approximately 0.8 mile upstream of the Guilford/Randolph County boundary.	None	+722	
Tributary 30	Approximately 500 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	None	+762	City of High Point .
	Approximately 0.5 mile upstream of the confluence with West Fork Deep River (Stream No. 2).	None	+800	
Tributary 31	Approximately 750 feet upstream of the confluence with West Fork Deep River (Stream No. 2).	None	+778	City of High Point .
	Approximately 650 feet upstream of Arden Place	None	+863	
East Fork Deep River Tributary 2.	Approximately 500 feet upstream of the confluence with East Fork Deep River.	None	+790	Guilford County (Unincorporated Areas), City of Greensboro, City of High Point.
	Approximately 1,300 feet upstream of I–40	None	+866	
Haw River Tributary 19	Approximately 400 feet upstream of the confluence with Haw River.	None	+844	Guilford County (Unincorporated Areas).
	Approximately 1.0 mile upstream of the confluence with Haw River.	None	+901	
Horsepen Creek (Stream No. 55).	Approximately 120 feet downstream of railroad	+743	+742	Guilford County (Unincorporated Areas), City of Greensboro.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 200 feet downstream of Distribution Drive.	None	+835	
Tributary 1 (Stream No. 57)	At the confluence with Horsepen Creek	+756	+757	City of Greensboro.
	Approximately 1,375 feet upstream of Derbyshire Drive.	None	+833	
Tributary 2 (Stream No. 56)	At the confluence with Horsepen Creek	+762	+761	City of Greensboro.
	Approximately 1,800 feet upstream of Hobbs Road	None	+853	
Tributary B	At the confluence with Horsepen Creek Tributary 2	None	+778	City of Greensboro.
	Approximately 1.1 miles upstream of Hobbs Road	None	+861	
Tributary C	At the confluence with Horsepen Creek	None	+758	Guilford County (Unincorporated Areas), City of Greensboro
	Approximately 2,275 feet upstream of Four Farms Road.	None	+784	
Tributary D	At the confluence with Horsepen Creek	None	+772	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.8 mile upstream of Chance Road	None	+831	
Tributary F	At the confluence with Horsepen Creek	None	+785	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 400 feet upstream of Joseph Bryan Boulevard.	None	+822	
Tributary G	At the confluence with Horsepen Creek	None	+797	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.6 mile upstream of the confluence with Horsepen Creek.	None	+828	
Tributary H	At the confluence with Horsepen Creek	+795	+796	City of Greensboro.
	Approximately 0.4 mile upstream of Ballinger Road	None	+806	
Tributary I	At the confluence with Horsepen Creek Tributary H	None	+806	City of Greensboro.
	Approximately 100 feet upstream of Friendway Road.	None	+861	
Tributary K	At the confluence with Horsepen Creek	+820	+822	City of Greensboro.
	Approximately 250 feet upstream of North Chimney Rock Road.	None	+888	
Knight Road Branch	Approximately 1,700 feet upstream of the confluence with West Ford Deep River (Stream No. 2).	None	+819	Guilford County (Unincorporated Areas), City of High Point.
	At the Guilford/Forsyth County boundary	None	+838	
Lake Hamilton	At the confluence with North Buffalo Creek	+784	+785	City of Greensboro.
	Approximately 70 feet upstream of East Kemp Road.	None	+815	
Long Branch (Stream No. 25).	Approximately 1.6 miles upstream of West Wendover Avenue.	None	+837	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 550 feet upstream of I-40	None	+863	
Mile Branch Tributary 1	Approximately 700 feet upstream of the confluence with Mile Branch.	None	+729	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.7 mile upstream of the confluence with Mile Branch.	None	+780	
Muddy Creek East Tributary	At the Guilford/Randolph County boundary	None	+814	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,000 feet upstream of Baker Road	None	+855	
East Tributary 2	At the High Point ETJ/Archdale City boundary	None	+789	Guilford County (Unincorporated Areas), City of High Point.
	At the High Point ETJ/Archdale City boundary	None	+799	
East Tributary 4	At the Guilford/Randolph County boundary	None	+771	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,500 feet upstream of Liberty Road	None	+826	
East Tributary 5	At the High Point ETJ/Archdale City boundary	None	+778	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 550 feet upstream of Liberty Road	None	+814	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
North Buffalo Creek (Stream No. 66).	Approximately 50 feet downstream of Rankin Mill Road.	+696	+697	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 90 feet upstream of South Holden Road.	None	+816	
Tributary 1	At the confluence with Jordan Branch	None	+747	City of Greensboro.
	Approximately 700 feet upstream of Allyson Avenue.	None	+779	
Tributary 2	At the confluence with Muddy Creek	+719	+718	City of Greensboro.
	Approximately 0.4 mile upstream of Woodmore Drive.	None	+750	
Tributary 3	At Briarcliff Road	None	+744	City of Greensboro.
	Approximately 0.5 mile upstream of the confluence of North Buffalo Creek.	None	+756	
Tributary 5	Approximately 950 feet upstream of the confluence with North Buffalo Creek Tributary A.	+774	+775	City of Greensboro.
	Approximately 75 feet upstream of Forest Hill Drive	None	+843	
North Little Alamance Creek Tributary 6.	Approximately 700 feet upstream of the confluence with North Little Alamance Creek.	None	+627	Guilford County (Unincorporated Areas).
	Approximately 1,900 feet upstream of U.S. 70	None	+649	
Philadelphia Lake	At the confluence with North Buffalo Creek	+726	+728	City of Greensboro.
	Approximately 1,100 feet upstream of West Cone Boulevard.	None	+810	
Parks Creek	Approximately 0.4 mile downstream of the Alamance/Guilford County boundary.	None	+633	Guilford County (Unincorporated Areas).
	Approximately 1,000 feet upstream of the Alamance/Guilford County boundary.	None	+656	
Polecat Creek Tributary 4	At the Guilford/Randolph County boundary	None	+695	Guilford County (Unincorporated Areas).
	Approximately 1,400 feet upstream of SR 62	None	+712	
Reedy Fork Tributary 10	Approximately 0.5 mile upstream of the confluence with Reedy Fork Creek.	+742	+745	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1.0 mile upstream of the confluence with Reedy Fork Creek.	None	+752	
Richland Creek Tributary 12	At Nathan Hunt Drive	None	+793	City of High Point.
	Approximately 100 feet upstream of Tate Street	None	+863	
Tributary 15	Approximately 50 feet upstream of Surrett Drive	+827	+828	City of High Point.
	Approximately 100 feet upstream of South Elm Street.	None	+857	
Tributary 2	Approximately 250 feet upstream of the confluence with Richland Creek (Stream No. 30).	None	+713	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.6 mile upstream of the confluence with Richland Creek.	None	+809	
Tributary 3	Approximately 625 feet upstream of the confluence with Richland Creek.	None	+724	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 75 feet upstream of Lawndale Avenue.	None	+828	
Tributary 4	At the confluence with Richland Creek Tributary 3	None	+753	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,550 feet upstream of Central Avenue.	None	+829	
Rock Creek Tributary 3	Approximately 750 feet upstream of the confluence with Rock Creek (Stream No. 80).	None	+632	Guilford County (Unincorporated Areas).
	Approximately 1.1 miles upstream of the confluence with Rock Creek (Stream No. 80).	None	+652	
Sandy Ridge Tributary	At the downstream side of NC 68	+797	+800	Guilford County (Unincorporated Areas).
	At Gilmore Dairy Road	None	+832	
Smith Branch	Approximately 1,700 feet upstream of the confluence with Reedy Fork Creek.	+674	+675	Guilford County (Unincorporated Areas).
	Approximately 1.7 miles upstream of Turner Smith Road.	None	+758	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
South Buffalo Creek (Stream No. 67).	Approximately 350 feet upstream of East Lee Street.	+714	+715	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1,100 feet upstream of Guilford College Road.	None	+876	
South Buffalo Creek Tributary A.	At the confluence with South Buffalo Creek	+805	+807	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 0.7 mile upstream of Tower Road	None	+902	
Tributary B	At the confluence with South Buffalo Creek Tributary A.	+810	+809	City of Greensboro.
	Approximately 550 feet upstream of Richland Street.	None	+886	
Tributary 1	At the confluence with South Buffalo Creek	+804	+807	City of Greensboro.
	Approximately 300 feet upstream of Pennoak Road	None	+837	
Tributary 4	At the confluence with South Buffalo Creek	+712	+713	Guilford County (Unincorporated Areas), City of Greensboro.
	Approximately 1,250 feet upstream of South English Street.	None	+770	
Tributary 5	At the confluence with South Buffalo Creek	+718	+719	City of Greensboro.
	Approximately 1,100 feet upstream of South English Street.	None	+773	
Tributary 8	At the confluence with South Buffalo Creek	+725	+728	City of Greensboro.
	Approximately 800 feet upstream of South Benbow Road.	None	+739	
Tributary 9	At the confluence with South Buffalo Creek	+733	+735	City of Greensboro.
	Approximately 50 feet downstream of East Vandalia Road.	None	+746	
Tributary 10	Approximately 180 feet upstream of the confluence with Ryan Creek.	None	+736	City of Greensboro.
	Approximately 50 feet downstream of Webster Road.	None	+807	
Stream No. 13 Tributary 1	Approximately 400 feet upstream of the confluence with Stream No. 13.	None	+806	City of High Point.
	Approximately 2,400 feet upstream of the confluence with Stream No. 13.	None	+854	
Tributary 3	Approximately 250 feet upstream of the confluence with Stream No. 13.	None	+817	City of High Point.
	Approximately 400 feet upstream of Pine Valley Road.	None	+856	
Stream No. 27 Tributary 2	Approximately 350 feet upstream of the confluence with Stream No. 27.	None	+786	City of High Point.
	Approximately 1,700 feet upstream of Alpine Drive	None	+833	
Stream No. 34	Approximately 450 feet downstream of Habersham Road.	None	+817	City of High Point.
	Approximately 1,850 feet downstream of Pendleton Street.	None	+851	
Stream No. 34A	At the upstream side of Jackson Lake Road	None	+745	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 200 feet upstream of Baker Road	None	+827	
Tributary 1	At the confluence with Stream No. 34A	None	+752	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,650 feet upstream of the confluence with Stream No. 34A.	None	+782	
Tributary 2	At the confluence with Stream No. 34A	None	+753	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 1,650 feet upstream of the confluence with Stream No. 34A.	None	+793	
Tributary 3	At the confluence with Stream No. 34A	None	+769	Guilford County (Unincorporated Areas), City of High Point.
	Approximately 0.5 mile upstream of the confluence with Stream No. 34A.	None	+820	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 4	At the confluence with Stream No. 34A Tributary 3	None	+775	City of High Point.
	Approximately 1,700 feet upstream of the confluence with Stream No. 34A Tributary 3.	None	+825	
Tributary 6	At the confluence with Stream No. 34A	None	+794	City of High Point.
	Approximately 450 feet upstream of North Hall Street.	None	+818	
Tributary 7	At the confluence with Stream No. 34A	None	+817	City of High Point.
	Approximately 1,350 feet upstream of Baker Road	None	+864	
Tributary A to Travis Creek	At the Alamance/Guilford County boundary	None	+623	Guilford County (Unincorporated Areas).
	Approximately 600 feet upstream of Howerton Road.	None	+674	
Unnamed Tributary to West Fork Deep River.	Approximately 750 feet upstream of the confluence with West Fork Deep River Tributary 1.	None	+832	Guilford County (Unincorporated Areas).
	Approximately 200 feet upstream of Adkins Road	None	+855	
West Fork Deep River (Stream No. 2).	Approximately 1,750 feet upstream of the confluence with West Fork Deep River Tributary 1 (Stream No. 3).	None	+833	Guilford County (Unincorporated Areas).
	At the Guilford/Forsyth County boundary	None	+862	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+North American Vertical Datum.

ADDRESSES

City of Greensboro

Maps are available for inspection at Greensboro Stormwater Management Division, 2602 South Elm Eugene Street, Greensboro, North Carolina.

Send comments to The Honorable Keith Holliday, Mayor of the City of Greensboro, P.O. Box 3136, Greensboro, North Carolina 27402–3136.

City of High Point

Maps are available for inspection at the High Point City Hall, 211 South Hamilton Street, High Point, North Carolina.

Send comments to The Honorable Rebecca Smothers, Mayor of the City of High Point, P.O. Box 230, High Point, North Carolina 27261.

Town of Jamestown

Maps are available for inspection at the Jamestown Town Hall, 301 East Main Street, Jamestown, North Carolina.

Send comments to The Honorable William G. Ragsdale, III, Mayor of the Town of Jamestown, P.O. Box 848, Jamestown, North Carolina 27282.

Town of Pleasant Garden

Maps are available for inspection at the Town of Pleasant Garden Kirkman Municipal Building, 4920 Alliance Church Road, Pleasant Garden, North Carolina.

Send comments to The Honorable Rick Wallace, Mayor of the Town of Pleasant Garden, P.O. Box 307, Pleasant Garden, North Carolina 27313.

Unincorporated Areas of Guilford County

Maps are available for inspection at the Guilford County Planning and Development Office, 201 South Eugene Street, Greensboro, North Carolina.

Send comments to Mr. W. David McNeill, Jr., Guilford County Interim Manager, P.O. Box 3427, Greensboro, North Carolina 27402.

Lincoln County, North Carolina and Incorporated Areas

Anderson Creek	At the confluence with Killian Creek	None	+667	Unincorporated Areas of Lincoln County.
	At the confluence with Hooper Creek and Wingate Creek.	None	+709	
Tributary 1	At the confluence with Anderson Creek	None	+675	Unincorporated Areas of Lincoln County.
	Approximately 1.9 miles upstream of the confluence with Anderson Creek.	None	+746	
Armstrong Branch	At the confluence with Dellinger Branch	None	+712	Unincorporated Areas of Lincoln County.
	Approximately 0.9 mile upstream of the confluence with Dellinger Branch.	None	+765	
Ballard Creek	At the confluence with Wingate Creek	None	+714	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence of Ballard Creek Tributary 3.	None	+829	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 1	At the confluence with Ballard Creek	None	+745	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence with Ballard Creek.	None	+791	
Tributary 2	At the confluence with Ballard Creek	None	+765	Unincorporated Areas of Lincoln County.
	Approximately 90 feet downstream of East King Wilkinson Road (State Route 1349).	None	+827	
Tributary 3	At the confluence with Ballard Creek	None	+811	Unincorporated Areas of Lincoln County.
	Approximately 1,900 feet upstream of North Ernest Huss Lane.	None	+911	
Bradshaw Branch	At the confluence with Leepers Creek	None	+713	Unincorporated Areas of Lincoln County.
	Approximately 1.7 miles upstream of the confluence with Leepers Creek.	None	+754	
Buffalo Creek	At Cleveland/Lincoln County boundary	None	+957	Unincorporated Areas of Lincoln County.
	Approximately 600 feet upstream of NC–10	None	+1,155	
Tributary 5	At the confluence with Buffalo Creek	None	+988	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek.	None	+1,017	
Tributary 6	At the confluence with Buffalo Creek	+1,033		Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of the confluence of Buffalo Creek Tributary 6A.	None	+1,099	
Tributary 6A	At the confluence with Buffalo Creek Tributary 6	None	+1,074	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence with Buffalo Creek Tributary 6.	None	+1,118	
Carpenter Creek	Approximately 0.4 mile upstream of the confluence with Clarks Creek.	+773	+774	Unincorporated Areas of Lincoln County, City of Lincolnton.
	Approximately 100 feet downstream of U.S. 321	None	+865	
Tributary 1	At the confluence with Carpenter Creek	None	+801	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of North Bulldog Lane.	None	+833	
Catawba River	At Gaston/Lincoln County boundary	None	+665	Unincorporated Areas of Lincoln County.
	At Cowans Ford Dam	None	+670	
Tributary 4	At the confluence with Catawba River	None	+665	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of the confluence with Catawba River.	None	+665	
Tributary 5	At the confluence with Catawba River	None	+667	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of the confluence with Catawba River.	None	+673	
Tributary 6	At the confluence with Catawba River	None	+668	Unincorporated Areas of Lincoln County.
	Approximately 300 feet upstream of North Club Drive (State Route 1395).	None	+682	
Clarks Creek	Approximately 0.8 mile downstream of West Maiden-Salem Road (State Route 1274).	None	+780	Unincorporated Areas of Lincoln County.
	Approximately 200 feet upstream of Lincoln/Catawba County boundary.	None	+792	
Tributary 1	Approximately 1,100 feet upstream of the confluence with Clarks Creek.	+764	+765	City of Lincolnton.
	Approximately 150 feet upstream of North Aspen Street.	None	+788	
Tributary 2	At the confluence with Clarks Creek	None	+781	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence with Clarks Creek.	None	+790	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Crooked Creek	At the confluence with Leepers Creek	None	+691	Unincorporated Areas of Lincoln County.
	Approximately 0.9 mile upstream of the confluence with Leepers Creek.	None	+720	
Dellinger Branch	At the confluence with Leepers Creek	None	+712	Unincorporated Areas of Lincoln County.
	Approximately 1,150 feet upstream of South Low Bridge Road (State Route 1314).	None	+792	
Tributary 1	At the confluence with Dellinger Branch	None	+738	Unincorporated Areas of Lincoln County.
	Approximately 1,200 feet upstream of East Orchard Road (State Route 1358).	None	+809	
Forney Creek	At the confluence with Killian Creek	None	+663	Unincorporated Areas of Lincoln County
	Approximately 2.6 miles upstream of East Optimist Club Road (State Route 1380).	None	+769	
Tributary 1	At the confluence with Forney Creek	None	+679	Unincorporated Areas of Lincoln County.
	Approximately 1,350 feet upstream of the confluence of Forney Creek Tributary 1B.	None	+710	
Tributary 1A	At the confluence with Forney Creek Tributary 1	None	+679	Unincorporated Areas of Lincoln County,
	Approximately 0.7 mile upstream of the Railroad	None	+707	
Tributary 1B	At the confluence with Forney Creek Tributary 1	None	+695	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of the confluence with Forney Creek Tributary 1.	None	+702	
Glenn Creek	At Cleveland/Lincoln County boundary	None	+899	Unincorporated Areas of Lincoln County.
	Approximately 230 feet downstream of NC–27	None	+1,041	
Hog Branch	At the confluence with Larkard Creek	None	+788	Unincorporated Areas of Lincoln County.
	Approximately 1.0 mile upstream of North U.S. 321 (State Route 1844).	None	+830	
Hooper Creek	At the confluence with Anderson creek and Wingate Creek.	None	+709	Unincorporated Areas of Lincoln County.
	Approximately 1.6 miles upstream of the confluence with Anderson Creek and Wingate Creek.	None	+753	
Howards Creek	Approximately 1,800 feet upstream of the confluence with South Fork Catawba River.	None	+769	Unincorporated Areas of Lincoln County.
	Approximately 100 feet upstream of Catawba/Lincoln County boundary.	None	+972	
Tributary 1	At the confluence with Howards Creek	None	+769	Unincorporated Areas of Lincoln County.
	Approximately 0.8 mile upstream of the confluence with Howards Creek.	None	+795	
Tributary 2	At the confluence with Howards Creek	None	+780	Unincorporated Areas of Lincoln County .
	Approximately 1.4 miles upstream of North Alf Hoover Road (State Route 1200).	None	+904	
Tributary 3	At the confluence with Howards Creek	None	+839	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of North Howards Creek Mill Road (State Route 1194).	None	+865	
Tributary 4	At the confluence with Howards Creek	None	+859	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream West Abernethy Farm Road (State Route 1195).	None	+904	
Tributary 5	At the confluence with Howards Creek	None	+867	Unincorporated Areas of Lincoln County.
	Approximately 100 feet downstream of North Overlook Lane.	None	+909	
Tributary 6	At the confluence with Howards Creek	None	+911	Unincorporated Areas of Lincoln County.
	Approximately 0.8 mile upstream of West Reepsville Road (State Route 1113).	None	+971	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 7	At the confluence with Howards Creek	None	+928	Unincorporated Areas of Lincoln County.
	Approximately 1,100 feet upstream of West Gilbert Sain Road (State Route 1210).	None	+1,022	
Hoyle Creek	Approximately 200 feet downstream of Gaston/Lincoln County boundary.	None	+742	Unincorporated Areas of Lincoln County.
	Approximately 10 feet downstream of East Keener Road (State Route 1323).	None	+872	
Tributary 1	At the confluence with Hoyle Creek	None	+742	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of East Magnolia Grove Road (State Route 1309).	None	+773	
Tributary 2	At the confluence with Hoyle Creek	None	+756	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of the confluence with Hoyle Creek.	None	+770	
Tributary 4	At the confluence with Hoyle Creek	None	+767	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of the confluence with Hoyle Creek.	None	+789	
Tributary 5	At the confluence with Hoyle Creek	None	+784	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of East Hovis Road (State Route 1315).	None	+810	
Tributary 6	At the confluence with Hoyle Creek	None	+809	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of South Hill Road (State Route 1321).	None	+855	
Indian Creek	Approximately 0.6 mile downstream of Gaston/Lincoln County boundary.	None	+787	Unincorporated Areas of Lincoln County.
	At Catawba/Lincoln County boundary	None	+1,011	
Tributary 1	At upstream side of South Landers Church Road (State Route 1176).	+761	+762	Unincorporated Areas of Lincoln County.
	Approximately 650 feet upstream of South St. Marks Church Road (State Route 1172).	None	+808	
Tributary 2	Approximately 1,200 feet upstream of the confluence with Indian Creek.	None	+773	Unincorporated Areas of Lincoln County.
	Approximately 1,200 feet upstream of the dam	None	+896	
Johnson Creek	At Gaston/Lincoln County boundary	None	+664	Unincorporated Areas of Lincoln County.
	Approximately 0.9 mile upstream of Gaston/Lincoln County boundary.	None	+677	
Killian Creek	At Gaston/Lincoln County boundary	None	+635	Unincorporated Areas of Lincoln County.
	Approximately 1.5 miles upstream of East Mundy Road (State Route 1349).	None	+829	
Larkard Creek	At the confluence with Clarks Creek	None	+782	Unincorporated Areas of Lincoln County.
	Approximately 200 feet upstream of East Springs East Road (State Route 1342).	None	+845	
Leepers Creek	At the Gaston/Lincoln County boundary	None	+635	Unincorporated Areas of Lincoln County.
	At the confluence with Lippard Creek and Sawmill Branch.	None	+807	
Tributary 1	At the confluence with Leepers Creek	None	+661	Unincorporated Areas of Lincoln County.
	Approximately 0.6 mile upstream of the confluence with Leepers Creek.	None	+677	
Tributary 2	At the confluence with Leepers Creek	None	+663	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of the confluence with Leepers Creek.	None	+685	
Tributary 3	At the confluence with Leepers Creek	None	+665	Unincorporated Areas of Lincoln County.
	Approximately 2,000 feet upstream of the confluence with Leepers Creek.	None	+686	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
Tributary 4	At the confluence with Leepers Creek	None	+667	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of the confluence with Leepers Creek.	None	+696	
Tributary 5	At the confluence with Leepers Creek	None	+671	Unincorporated Areas of Lincoln County.
	Approximately 1.2 miles upstream of the confluence with Leepers Creek.	None	+702	
Leonard Fork	Approximately 1,300 feet upstream of the confluence with Indian Creek.	None	+773	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of West Flay Road (State Route 1140).	None	+934	
Tributary 1	At the confluence with Leonard Fork	None	+868	Unincorporated Areas of Lincoln County.
	Approximately 0.9 mile upstream of the confluence with Leonard Fork.	None	+937	
Lick Fork Creek	At the confluence with Indian Creek	None	+790	Unincorporated Areas of Lincoln County.
	Approximately 1,300 feet upstream of Gaston/Lincoln County boundary.	None	+792	
Lick Run Creek	At the confluence with Leepers Creek	None	+754	Unincorporated Areas of Lincoln County.
	Approximately 900 feet upstream of North Leeping Brook Road (State Route 1530).	None	+895	
Lippard Creek	At the confluence with Leepers Creek and Sawmill Branch.	None	+807	Unincorporated Areas of Lincoln County.
	At Catawba/Lincoln County boundary	None	+869	
Tributary 1	At the confluence with Lippard Creek	None	+832	Unincorporated Areas of Lincoln County.
	Approximately 1,600 feet upstream of East Ivey Church Road (State Route 1343).	None	+891	
Lithia Inn Branch	Approximately 500 feet downstream of North Jonas Drive.	+775	+774	City of Lincolnton.
	Approximately 450 feet upstream of U.S. 321	None	+878	
Tributary 1	Approximately 500 feet upstream of the confluence with Lithia Inn Branch.	+771	+772	City of Lincolnton.
	Approximately 600 feet upstream of State Route 150/South Dave Warlick Drive.	None	+828	
Tributary 2	At the confluence with Lithia Inn Branch Tributary 1	None	+783	City of Lincolnton.
	Approximately 200 feet upstream of East Laurel Street.	None	+805	
Little Buffalo Creek	At Cleveland/Lincoln County boundary	None	+854	Unincorporated Areas of Lincoln County.
	Approximately 50 feet downstream of West Flay Road (State Route 1140).	None	+964	
Little Creek (East)	At the confluence with Indian Creek	None	+847	Unincorporated Areas of Lincoln County.
	Approximately 200 feet upstream of West Houser Farm Road (State Route 1127).	None	+960	
Little Creek (West)	At the Cleveland/Lincoln County boundary	None	+961	Unincorporated Areas of Lincoln County.
	Approximately 1.4 miles upstream of Cleveland/Lincoln County boundary.	None	+1,022	
Little Indian Creek	At the confluence of Indian Creek	None	+878	Unincorporated Areas of Lincoln County.
	Approximately 250 feet upstream of West Macedonia Church Road.	None	+1,067	
Tributary 1	At the confluence with Little Indian Creek	None	+905	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of the confluence with Little Indian Creek.	None	+991	
Tributary 2	At the confluence with Little Indian Creek	None	+917	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of North Red Dawn Estate Trail.	None	+980	
Tributary 3	At the confluence with Little Indian Creek	None	+934	Unincorporated Areas of Lincoln County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 300 feet upstream of Hulls Grove Church Road.	None	+984	
Tributary 4	At the confluence with Little Indian Creek	None	+937	Unincorporated Areas of Lincoln County.
	Approximately 0.4 mile upstream of West Macedonia Church Road (State Route 1108).	None	+1,069	
Tributary 4A	At the confluence with Little Indian Creek Tributary 4.	None	+978	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of North Tallent Road (State Route 1120).	None	+1,047	
Little Pott Creek	At the confluence with Pott Creek	None	+793	Unincorporated Areas of Lincoln County.
	Approximately 150 feet downstream of North Cansler Road (State Route 1197).	None	+874	
Lutz Branch	At the Gaston/Lincoln County boundary	None	+738	Unincorporated Areas of Lincoln County.
	Approximately 150 feet downstream of East Mirror Lake Road (State Route 1474).	None	+760	
McClure Branch	At the confluence with Leepers Creek	None	+671	Unincorporated Areas of Lincoln County.
	Approximately 1.6 miles upstream of South Mt. Zion Church Road (State Route 1404).	None	+743	
Mill Creek	At the confluence with Indian Creek	None	+795	Unincorporated Areas of Lincoln County.
	Approximately 1.5 miles upstream of South Bess Chapel Church Road (State Route 1150).	None	+1,023	
Muddy Creek	At Gaston/Lincoln County boundary	None	+713	Unincorporated Areas of Lincoln County.
	Approximately 0.7 mile upstream of the confluence of Muddy Creek Tributary 2.	None	+786	
Tributary 1	At the confluence of Muddy Creek	None	+748	Unincorporated Areas of Lincoln County.
	Approximately 1,700 feet upstream of U.S. 321	None	+778	
Tributary 2	At the confluence with Muddy Creek	None	+752	Unincorporated Areas of Lincoln County.
	Approximately 1,450 feet upstream of U.S. 321	None	+793	
Ore Bank Branch	At the confluence with Leepers Creek	None	+783	Unincorporated Areas of Lincoln County.
	Approximately 1.0 mile upstream of the confluence with Leepers Creek.	None	+822	
Pott Creek	At the confluence with South Fork Catawba River	None	+778	Unincorporated Areas of Lincoln County.
	At Catawba/Lincoln County boundary	None	+802	
Reed Creek	At the confluence with Leepers Creek	None	+723	Unincorporated Areas of Lincoln County.
	Approximately 1,900 feet upstream of East Stagecoach Road (State Route 1363).	None	+773	
Rockdam Creek	At the confluence with Howards Creek	None	+769	Unincorporated Areas of Lincoln County.
	Approximately 250 feet upstream of South Howards Creek School Road (State Route 1186).	None	+830	
Sawmill Branch	At the confluence with Leepers Creek	None	+807	Unincorporated Areas of Lincoln County.
	Approximately 1.3 miles upstream of North Union Church Road (State Route 1344).	None	+871	
Tributary 1	At the confluence with Sawmill Branch	None	+833	Unincorporated Areas of Lincoln County.
	Approximately 0.5 mile upstream of the confluence with Sawmill Branch.	None	+864	
Snyder Creek	At the confluence with Killian Creek	None	+686	Unincorporated Areas of Lincoln County.
	Approximately 1.8 mile upstream of the confluence with Killian Creek.	None	+732	
South Fork Catawba River	Approximately 2.4 miles upstream of the confluence of Howards Creek.	None	+773	Unincorporated Areas of Lincoln County.
	At Catawba/Lincoln County boundary	None	+793	
Tributary 3	At Gaston/Lincoln County boundary	None	+717	Unincorporated Areas of Lincoln County.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD). +Elevation in feet (NAVD). #Depth in feet above ground.		Communities affected
		Effective	Modified	
	Approximately 500 feet upstream of West Hoffman Road (State Route 1245).	None	+730	
Tributary 4	At Railroad	+756	+757	Unincorporated Areas of Lincoln County, City of Lincolnton.
	Approximately 200 feet upstream of State Route 150.	None	+776	
Tributary 5	At the confluence with South Fork Catawba River	None	+782	Unincorporated Areas of Lincoln County.
	Approximately 1.0 mile upstream of the confluence with South Fork Catawba River.	None	+800	
Tanyard Creek	At the confluence with Howards Creek	None	+779	Unincorporated Areas of Lincoln County.
	Approximately 2.6 miles upstream of West Reepsville Road (State Route 1113).	None	+906	
Tributary 1	At the confluence with Tanyard Creek	None	+791	Unincorporated Areas of Lincoln County.
	Approximately 1.6 miles upstream of West Reepsville Road (State Route 1113).	None	+890	
Walker Branch	Approximately 200 feet downstream of North Aspen Street.	+764	+765	Unincorporated Areas of Lincoln County, City of Lincolnton.
	Approximately 200 feet downstream of East Wilma Sigman Road.	None	+815	
Tributary 2	At the confluence with Walker Branch	+806	+805	Unincorporated Areas of Lincoln County, City of Lincolnton.
	Approximately 0.4 mile upstream of North Huss Street.	None	+947	
Wilkinson Creek	At the confluence with Wingate Creek	None	+753	Unincorporated Areas of Lincoln County.
	Approximately 300 feet upstream of State Route 150.	None	+910	
Wingate Creek	At the confluence with Anderson Creek and Hooper Creek.	None	+709	Unincorporated Areas of Lincoln County.
	Approximately 1.3 miles upstream of the confluence of Wilkinson Creek.	None	+804	

ADDRESSES

City of Lincolnton:

Maps are available for inspection at the City of Lincolnton Planning Department, 114 West Sycamore Street, Lincolnton, North Carolina.

Send comments to The Honorable Bobby Huitt, Mayor of the City of Lincolnton, P.O. Box 617, Lincolnton, North Carolina 28093.

Unincorporated Areas of Lincoln County:

Maps are available for inspection at the Lincoln County Planning Department, 302 North Academy Street, Lincolnton, North Carolina.

Send comments to Mr. Tom Anderson, Chairman of the Lincoln County Board of Commissioners, 115 West Main Street, Lincolnton, North Carolina 28092.

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: October 4, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–17279 Filed 10–16–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 204, 235, and 252

RIN 0750–AF13

Defense Federal Acquisition Regulation Supplement; Export-Controlled Information and Technology (DFARS Case 2004–D010)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule; reopening of comment period.

SUMMARY: DoD is reopening the comment period for the proposed rule published at 71 FR 46434 on August 14, 2006 which closed October 13. The proposed rule contains requirements for preventing unauthorized disclosure of export-controlled information and technology under DoD contracts. The comment period is extended to provide additional time for interested parties to review the proposed changes.

DATES: The ending date for submission of comments is reopened until November 2, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2004–D010.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

[FR Doc. E6–17231 Filed 10–16–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060901235–6235–01; I.D. 082406C]

RIN 0648–AQ87

Fisheries of the Northeastern United States; Amendment 1 to the Atlantic Herring Fishery Management Plan; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; correction.

SUMMARY: On September 27, 2006, NMFS published the proposed rule for Amendment 1 to the Atlantic Herring Fishery Management Plan (Amendment 1) incorporating the Final Environmental Impact Statement, Regulatory Impact Review, and the Initial Regulatory Flexibility Analysis, for Secretarial review and requested comments from the public. The proposed rule contains an error in the **ADDRESSES** caption regarding the email address for submitting comments regarding the burden-hour estimates and other aspects of the collection-of-information requirements. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Eric Jay Dolin, Fishery Policy Analyst, (978) 281- 9259, fax (978) 281- 9135.

SUPPLEMENTARY INFORMATION: The proposed rule for Amendment 1 to the Atlantic Herring Fishery Management Plan was published in the **Federal Register** on September 27, 2006 (71 FR 56446), with public comment accept through November 13, 2006. The e-mail address under the **ADDRESSES** caption was misspelled for the comments regarding the burden of hour estimates or other aspects of the collection-of-information requirements. This document corrects that error.

In proposed rule FR Doc. 06–8263, on page 56447 of the September 27, 2006, issue of the **Federal Register**, make the following correction under the **ADDRESSES** caption:

In column 1, remove the e-mail address for ''*David_Rotsker@omb.eop.gov*'' in the next to last line of the **ADDRESSES** caption and add in its place ''*David_Rostker@omb.eop.gov*''.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 12, 2006.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E6–17239 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 101006A]

Pacific Fishery Management Council; Public Meetings and Hearings

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings.

SUMMARY: The Pacific Fishery Management Council (Council) announces the dates and locations of public hearings to solicit comments on the proposed 15th amendment to the Pacific Coast Salmon Plan to allow *de minimis* ocean fishing impacts on Klamath River fall Chinook during years that would otherwise be closed to ocean salmon fishing.

DATES: Written comments on the salmon management options must be received by Tuesday, November 7, 2006, at 4:30 p.m., Pacific Time.

ADDRESSES: Written comments should be sent to Mr. Donald Hansen, Chairman, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384, telephone: 503–820–2280 (voice) or 503–820–2299 (fax). For specific hearing locations, see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION:

November 1–2, 2006: Public hearings will be held to receive comments on the proposed *de minimis* fishing alternatives adopted by the Council at its September 2006 meeting. All public hearings begin at 7 p.m. on the dates and at the locations specified here.

November 1, 2006: Old Mill Casino, Cedar Room, 3201 Tremont Avenue (Hwy 101), North Bend, OR 97459 541–756–8800.

November 2, 2006: Hilton Sonoma Wine Country, Nagasawa A Room, 3555 Round Barn Boulevard, Santa Rosa, CA 95403, 707–523–7555.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 (voice), or 503–820–2299 (fax) at least five days prior to the meeting date.

Dated: October 11, 2006.

James P. Burgess,

Acting Director, Office Of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–17241 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 71, No. 200

Tuesday, October 17, 2006

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–06–09]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection National Organic Program (NOP) Record Keeping Requirements.

DATES: Comments received by December 18, 2006 will be considered.

Additional Information or Comments: Contact Toni Strother, National Organic Program, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 4008–So., Ag Stop 0268, Washington, DC, 20250, telephone (202) 720–3252, fax (202) 205–7808.

SUPPLEMENTARY INFORMATION:

Title: National Organic Program.

OMB Number: 0581–0191.

Expiration Date of Approval: May 31, 2007.

Type of Request: Extension and Revision of a currently approved information collection.

Abstract: The Organic Foods Production Act of 1990 (OFPA) as amended (7 U.S.C. 6501 *et seq.*) mandates that the Secretary develop a NOP to accredit eligible State program's governing State officials or private persons as certifying agents who would certify producers or handlers of agricultural products that have been produced using organic methods as provided for in OFPA. This regulation: (1) Established national standards governing the marketing of certain agricultural products as organically produced products; (2) assures consumers that organically produced products meet a consistent standard; and (3) facilitates interstate commerce in fresh and processed food that is organically produced.

Reporting and recordkeeping are essential to the integrity of the organic certification system. They create a paper trail that is a critical element in carrying out the mandate of OFPA and NOP. They serve the AMS mission, program objectives, and management needs by providing information on the efficiency and effectiveness of the program. The information affects decisions because it is the basis for evaluating compliance with OFPA and NOP, for administering the program, for management decisions and planning, and for establishing the cost of the program. It supports administrative and regulatory actions in response to noncompliance with OFPA and NOP.

In general, the information collected is used by USDA, State program governing State officials, and certifying agents. It is created and submitted by State and foreign program officials, peer review panel members, accredited certifying agents, organic inspectors, certified organic producers and handlers, those seeking accreditation or certification, and parties interested in changing the National List. Additionally, it necessitates that all of these entities have procedures and space for recordkeeping.

USDA. USDA is the accrediting authority. USDA accredits domestic and foreign certifying agents who certify domestic and foreign organic producers and handlers, using information from the agents documenting their business operations and program expertise. USDA also permits States to establish their own organic certification programs after the programs are approved by the Secretary, using information from the States documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP.

States. States may operate their own organic certification programs. State officials obtain the Secretary's approval of their programs by submitting information to USDA documenting their ability to operate such programs and showing that such programs meet the requirements of OFPA and NOP. The Secretary will review a State organic program not less than once during each 5-year period following the date of the initial program approval. To date, two State organic certification programs have been approved by USDA. The initial burden for each State organic certification program is an average of 40 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $1,280. State organic certification programs require reporting and recordkeeping burdens similar to those required by the NOP. The average annual burden for States are 55 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $1,760.

Certifying agents. Certifying agents are State, private, or foreign entities who are accredited by USDA to certify domestic and foreign producers and handlers as organic in accordance with OFPA and NOP. Each entity wanting to be an agent seeks accreditation from USDA, submitting information documenting its business operations and program expertise. Accredited agents determine if a producer or handler meets organic requirements, using detailed information from the operation documenting its specific practices and on-site inspection reports from organic inspectors. Initial estimates were based on 59 entities applying for accreditation (13 State certifiers, 36 private entities, 10 foreign entities). The initial burden for each State certifier was an average of 695 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,765. The initial burden for each private or foreign entity was 700 hours or if calculated at a rate of $27 per hour (rounded up to the next dollar) $18,900. Currently, 95 certifying agents (16 State certifiers, 39 private entities, 40 foreign entities) have been accredited. The AMS anticipates receiving approximately, 3 new applications per year. Accredited certifying agents submit annual updates with an annual burden, for each certifying agent, of an average of 11 hours or if calculated at a rate of $32 per hour (rounded up to the next dollar) $352.

Administrative costs for reporting, disclosure of information, and

recordkeeping vary among certifying agents. Factors affecting costs include the number and size of clients, the categories of certification provided, and the type of systems maintained.

When an entity applies for accreditation as a certifying agent, it must provide a copy of its procedures for complying with recordkeeping requirements (§ 205.504(b)(3)). Once certified, agents have to make their records available for inspection and copying by authorized representatives of the Secretary (§ 205.501(a)(9)). The USDA charges certifying agents for the time required to do these document reviews. Audits require less time when the documents are well organized and centrally located.

Recordkeeping requirements for certifying agents are divided into three categories of records with varying retention periods: (1) Records created by certifying agents regarding applicants for certification and certified operations, maintain 10 years, consistent with OFPA's requirement for maintaining all records concerning activities of certifying agents; (2) records obtained from applicants for certification and certified operations, maintain 5 years, the same as OFPA's requirement for the retention of records by certified operations; and (3) records created or received by certifying agents regarding accreditation, maintain 5 years, consistent with OFPA's requirement for renewal of agent's accreditation (§ 205.5 10(b)).

Organic inspectors. Inspectors, on behalf of certifying agents, conduct on-site inspections of certified operations and operations applying for certification. They determine whether or not certification should continue or be granted and report their findings to the certifying agent. Inspectors are the agents themselves, employees of the agents, or individual contractors. We estimate that about half are certifying agents or their employees and half are individual contractors. Individuals who apply for positions as inspectors submit to the agents information documenting their qualifications to conduct such inspections. Estimates: 293 inspectors (147 certifying agents and their employees, 146 individual contractors). The annual burden for each inspector is an average of 1 hour or if calculated at $32 per hour (rounded up to the next dollar) $32.

Producers and handlers. Producers and handlers, domestic and foreign, apply to certifying agents for organic certification, submit detailed information documenting their specific practices, provide annual updates to continue their certification, and report changes in their practices. Producers include farmers, livestock and poultry producers, and wild crop harvesters. Handlers include those who transport or transform food and include millers, bulk distributors, food manufacturers, processors, repackagers, or packers. Some handlers are part of a retail operation that processes organic products in a location other than the premises of the retail outlet.

The OFPA requires certified operators to maintain their records for 5 years. We estimate: 19,400 total operators (14,253 certified and 5,147 exempt), including 17,150 producers (12,176 certified and 4,974 exempt) and 2,250 handlers (1,977 certified and 273 exempt). The annual recordkeeping burden for each certified operator is an average of 5 hours or if calculated at $32 per hour (rounded up to the next dollar) $160.

Administrative costs for reporting and recordkeeping vary among certified operators. Factors affecting costs include the type and size of operation, and the type of systems maintained.

Research studies have indicated that operations using product labels containing the term ''organic'' handle an average of 20 labels annually and that there are about 1,977 handlers with the term organic on their label. An estimate of the time needed to develop labels for products sold, labeled, or represented as ''100 percent organic,'' ''organic,'' ''made with organic (specified ingredients),'' or which use the term organic to modify an ingredient in the ingredients statement is included. Also included is the time spent deciding about use of the USDA seal, a State emblem, or the seal, logo, or other identifying marks of a private certifying agent (§§ 205.300–205.310). Because the labeling requirements are in addition to Food and Drug Administration and Food Safety and Inspection Service requirements, the burden measurement does not include the hours necessary to develop the entire label. For purposes of calculating the burden, it is estimated that each handler develops 20 labels annually. Estimates: 1,977 certified handlers. The annual burden for each certified handler is an average of 1 hour per product label times 20 product labels per handler or if calculated at a rate of $32 per hour (rounded up to the next dollar) $640.

Interested parties. Any interested party may petition the National Organic Standards Board (NOSB) for the purpose of having a substance evaluated for recommendation to the Secretary for inclusion on or deletion from the National List. Estimates: 25 interested parties may petition the NOSB. The annual burden for each interested party is an average of 104 hours or if calculated at $32 per hour (rounded up to the next dollar) $3,328.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.74 hours per response.

Respondents: Producers, handlers, certifying agents, inspectors and State, Local or Tribal governments and interested parties.

Estimated Number of Respondents: 16,095.

Estimated Number of Responses: 365,343.

Estimated Number of Responses per Respondent: 22.7.

Estimated Total Annual Burden on Respondents: 635,697.

Comments are invited on: (1) 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; (2) 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; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Mark A. Bradley, Associate Deputy Administrator, National Organic Program, USDA–AMS–TM–NOP, 1400 Independence Ave., SW., Room 4008–S0., Ag Stop 0268, Washington, DC 20250 or via the Internet at: *Paperwork@usda.gov,* or by fax at: (202) 205–7808. All comments received will be available for public inspection during regular business hours at the same address. Also, all comments to this notice will be available for viewing on the NOP homepage at *http://www.ams.usda.gov/nop.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Authority: 7 U.S.C. 6501–6522.

Dated: October 10, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17190 Filed 10–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[No. PY–06–004]

Notice of Request for Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget (OMB), for an extension for and revision to a currently approved information collection for Poultry Market News Programs.

DATES: Comments received by December 18, 2006 will be considered.

Additional Information Or Comments: Interested parties are invited to submit written comments concerning this notice. Comments must be sent to Michael E. Sheats, Chief, Poultry Market News Branch, Poultry Programs, Agricultural Marketing Service, U.S. Department of Agriculture, STOP 0262, 1400 Independence Avenue, SW., Washington, DC 20250–0262, or fax (202–720–2403). Alternately, comments may be submitted electronically to: *Michael.Sheats@usda.gov.* Comments may also be submitted electronically to: *AMSPYDockets@usda.gov* or *http://www.regulations.gov.* Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Michael E. Sheats, Chief, Poultry Market News Branch, 202–720–6911.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This notice contains submission requirements subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, a description of the submission requirements and an estimate of the resulting burden on applicants is included.

Title: Poultry Market News Reports.

OMB Number: 0581–0033.

Expiration Date of Approval: August 31, 2007.

Type of Request: Extension of and revision to a currently approved information collection.

Abstract: Under the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*), the Poultry Market News Branch provides up-to-the-minute nationwide coverage of prices, supply, demand, trends, movement, and other pertinent information affecting the trading of poultry and eggs, and their respective products. The market reports compiled and disseminated by Market News provide current, unbiased, factual information to all members of the Nation's agricultural industry, from farm to retailer. These market reports assist producers, processors, wholesalers, retailers, and others in making informed production, purchasing, and sales decisions and promote orderly marketing by placing buyers and sellers on a more equal negotiating basis.

Market news reporters communicate with buyers and sellers of egg and poultry commodities on a daily basis in order to accomplish the Program's mission. This communication and information gathering is accomplished through the use of telephone conversations, facsimile transmissions, and electronic mail messages. Market News uses one OMB approved form, PY–90: Monthly Dried Egg Solids Stocks Report, to collect inventory information monthly from commercial dried egg products plants throughout the U.S. Cooperating firms submit this form to Market News primarily via facsimile transmissions.

(1) Collection of Market Information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Producers, processors, brokers, distributors, and retailers.

Estimated Number of Respondents: 1,775.

Estimated Number of Responses: 221,875.

Estimated Number of Responses per Respondent: 125.

Estimated Total Annual Burden on Respondents: 18,415.5 hours.

(2) Monthly Dried Egg Solids Stocks Form PY–90.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.083 hours per response.

Respondents: Commercial domestic dried egg products plants.

Estimated Number of Respondents: 10.

Estimated Number of Responses: 80.

Estimated Number of Responses per Respondent: 8.

Estimated Total Annual Burden on Respondents: 6.64 hours.

Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) 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; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: October 11, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E6–17193 Filed 10–16–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Office of the Under Secretary, Research, Education, and Economics; Notice of the Scientific Review Panel at the National Animal Disease Center, Ames, Iowa

AGENCY: Agricultural Research Service (ARS), USDA.

ACTION: Notice of meeting.

SUMMARY: The United States Department of Agriculture announces a conference call meeting of the Scientific Review Panel at the National Animal Disease Center, Ames, Iowa.

DATES: October 18, 2006, 8 a.m. to 11 a.m. or noon central time.

ADDRESSES: City Council Chambers, City Hall, 515 Clark Avenue, Ames, Iowa 50010 (access to a monitor of the conference call).

FOR FURTHER INFORMATION CONTACT: Steven Shafer, Midwest Area Director, USDA–ARS, 1815 North University Street, Peoria, Illinois 61604; Telephone (309) 681–6602; Fax (309) 681–6684; E-mail *sshafer@nwa.ars.usda.gov.*

SUPPLEMENTARY INFORMATION: On May 4, 2006, the City of Ames, Iowa, received allegations that wastes from areas at the National Animal Disease Center (NADC)

with animals challenged with prions were not properly treated prior to discharge to the City wastewater plant. An expert panel was convened to review scientific information about deactivation of prions and assess practices used at NADC to treat liquid wastes from areas where animals with prions are housed and handled that enter the Ames wastewater treatment system. (**Note:** For the purposes of this panel and its review, prions are defined as specific proteins that are abnormally shaped and can cause transmissible diseases associated with the allegations). The panel had its first meeting on August 23, 2006, at the Ames City Hall, followed by preparatory work on August 23, August 24, and September 20. The conference call meeting on October 18, 2006, will continue implementation of the panel's charge to evaluate four main issues related to the handling and disposal of potentially prion-contaminated materials in wastewater from the NADC: (1) Identify scientifically accepted methods for effectively destroying prions; (2) Assess the concerns raised regarding NADC's current and past methods for the destruction of prions; (3) Determine the risk posed to humans and the environment from the current, as well as previous, methods for the destruction of prions utilized at NADC; and (4) If remediation is needed, provide scientifically sound approaches for corrective action(s) that may be taken. Final conclusions of the review will be developed during a meeting at a later date, also to be announced. At the conclusion of its review, the panel will prepare a written report that documents the panel's findings for the four main issues being evaluated. The meeting on October 18 will be held by conference call. The public may monitor the panel's discussion via a speaker phone in the Ames City Hall's Council Chamber. No oral comments will be accepted from the public during the call, however, written public comment received by letter, fax, or e-mail to the contact person named above by close of business on Wednesday, November 1, 2006, will be provided to the panel members. Although access to the conference call monitor will be open to the public, space is limited. If you want to be assured of a seat at this meeting, you must register by contacting the contact person named above at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, and telephone and fax numbers when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration. Pre-registrations will be limited to 80 people; others may be able to attend on a space-available basis.

Dated: October 6, 2006.

Caird E. Rexroad, Jr.,

Associate Administrator, Agricultural Research Service.

[FR Doc. 06–8727 Filed 10–12–06; 12:44 pm]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1482

Grant of Authority for Subzone Status, E.I. du Pont de Nemours and Company, Inc., (Crop Protection Products), Valdosta, Georgia Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Foreign–Trade Zones Act provides for " . . . the establishment . . . of foreign–trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign–Trade Zones Board to grant to qualified corporations the privilege of establishing foreign–trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

WHEREAS, the Board's regulations (15 CFR Part 400) provide for the establishment of special–purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

WHEREAS, Brunswick Foreign–Trade Zone, Inc., grantee of Foreign–Trade Zone 144, has made application to the Board for authority to establish special–purpose subzone status at the manufacturing facilities (crop protection products) of E.I. du Pont de Nemours and Company, Inc., located in the Valdosta, Georgia area (FTZ Docket 15–2006, filed 4/27/2006);

WHEREAS, notice inviting public comment has been given in the **Federal Register** (71 FR 26321, 5/4/2006); and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations will be satisfied, and that approval of the application will be in the public interest;

NOW, THEREFORE, the Board hereby grants authority for subzone status for activity related to crop protection products at the manufacturing facilities of E.I. du Pont de Nemours and Company, Inc. (Subzone 144A), as described in the application and **Federal Register** notice, and subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 6th day of October 2006.

David M. Spooner,

Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.

Attest:

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E6–17268 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Order No. 1481

Reorganization/Expansion of Foreign–Trade Zone 148, Knoxville, Tennessee, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

WHEREAS, the Industrial Development Board of Blount County, grantee of Foreign–Trade Zone 148, submitted an application to the Board for authority to reorganize and expand FTZ 148 in the Knoxville, Tennessee, area, adjacent to the Knoxville Customs port of entry (FTZ Docket 12–2006; filed 4/6/2006);

WHEREAS, notice inviting public comment was given in the **Federal Register** (71 FR 19872, 4/16/2006) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

WHEREAS, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

NOW, THEREFORE, the Board hereby orders:

The application to reorganize and expand FTZ 148 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 6th day of October 2006.

Attest:

David M. Spooner,

Assistant Secretary of Commercefor Import Administration,Alternate ChairmanForeign–Trade Zones Board.

Pierre V. Duy,

Acting Executive Secretary.

[FR Doc. E6–17263 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–357–812)

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: The Department of Commerce (the Department) is partially rescinding its administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, to November 30, 2005, with respect to one company, Associacion de Cooperativas Argentinas (ACA).

EFFECTIVE DATE: October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James at (, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; Telephone: (202) 482–2657 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2005, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on honey from Argentina. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 70 FR 72109 (December 1, 2005). In response, on December 30, 2005, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) requested an administrative review of the antidumping duty order on honey from Argentina for the period December 1, 2004, through November 30, 2005. The petitioners requested that the Department conduct an administrative review of entries of subject merchandise made by 42 Argentine producers/exporters. In addition, the Department received requests for review from four Argentine exporters included in the petitioners' request, including ACA. On January 6, 2006, petitioners withdrew their request with respect to 23 companies listed in their original request.

On February 1, 2006, the Department initiated a review on the remaining 19 companies for which an administrative review was requested. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 71 FR 5241 (February 1, 2006).

On March 10, 2006, petitioners withdrew their requests for review of an additional twelve respondents. Accordingly, on April 10, 2006, the Department published a notice of partial rescission of review in response to petitioners' withdrawal of their requests covering twelve companies. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18066 (April 10, 2006). On August, 4, 2006, petitioners withdrew their request for an administrative review of respondent, Nexco S.A. On August 21, 2006 petitioners and respondent HoneyMax S.A. submitted letters withdrawing their requests for an administrative review of HoneyMax S.A. Accordingly, on September 6, 2006, the Department published a notice of partial rescission of review with regard to Nexco S.A. and HoneyMax S.A. *See Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 52526 (September 6, 2006)

On September, 11, 2006, petitioners and ACA submitted letters withdrawing their requests for an administrative review of ACA. See letter from ACA entitled ''Honey From Argentina Fourth Administrative Review: Partial Withdrawl of Review Request,'' dated September 11, 2006. *See also* letter from petitioners entitled ''Fourth Annual Administrative Review of the Antidumping Duty Order on Honey from Argentina Partial Withdrawal of Review Request,'' dated September 11, 2006.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. Although both petitioners and ACA withdrew their requests for review after the 90-day deadline, the Department finds it reasonable to extend the withdrawal deadline because the Department has not yet devoted significant time or resources to this review. Further, we find that neither petitioners' nor ACA's withdrawal constitutes an abuse of our procedures. *See, e.g., Persulfates from the People's Republic of China: Notice of Rescission of Antidumping Duty Administrative Review*, 71 FR 13810 (March 17, 2006).

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for ACA at the cash deposit rates in effect on the date of entry for entries during the period December 1, 2004, to November 30, 2005.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E6–17255 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–832

Pure Magnesium from the People's Republic of China: Final Results of 2004–2005 Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') published its preliminary results of administrative review of the antidumping duty order on pure magnesium from the People's Republic of China (''PRC'') on April 10, 2006. The period of review (''POR'') is May 1, 2004, through April 30, 2005. We invited interested parties to comment on our preliminary results. Based on our analysis of the comments received, we have made changes to our margin calculations. Therefore, the final results differ from the preliminary results. The final dumping margin for this review is listed in the ''Final Results of Review'' section below.

EFFECTIVE DATE: October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Eugene Degnan or Hua Lu, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0414 or (202) 482–6478, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 10, 2006, the Department published its preliminary results of review. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 71 FR 18067 (April 10, 2006) (''*Preliminary Results*''). On April 28, 2006, Tianjin Magnesium International, Ltd. (''TMI'') submitted additional surrogate value information. On May 8, 2006, TMI requested a hearing. On May 10, 2006, TMI submitted its case brief. US Magnesium LLC (''Petitioner'') submitted a rebuttal brief on May 17, 2006. On July 19, 2006, the Department held a public hearing. On July 31, 2006, the Department published a notice extending the time limit for the final results of review until September 7, 2006. *See Notice of Extension of Final Results of the 2004–2005 Administrative Review of Pure Magnesium from the People's Republic of China*, 71 FR 43110 (July 31, 2006). On September 12, 2006, the Department published a notice extending the time limit for the final results of review until September 29, 2006. *See Notice of Extension of Final Results of the 2004–2005 Administrative Review of Pure Magnesium from the People's Republic of China*, 71 FR 53662 (September 12, 2006). On October 6, 2006, the Department published a notice extending the time limit for the final results of review until October 10, 2006. *See Pure Magnesium from the People's Republic of China: Notice of Extension of Final Results of the 2004–2005 Administrative Review*, 71 FR 59078 (October 6, 2006).

We have conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (''the Act''), and 19 CFR 351.213.

Period of Review

The POR is May 1, 2004, through April 30, 2005.

Scope of Order

Merchandise covered by this order is pure magnesium regardless of chemistry, form or size, unless expressly excluded from the scope of this order. Pure magnesium is a metal or alloy containing by weight primarily the element magnesium and produced by decomposing raw materials into magnesium metal. Pure primary magnesium is used primarily as a chemical in the aluminum alloying, desulfurization, and chemical reduction industries. In addition, pure magnesium is used as an input in producing magnesium alloy. Pure magnesium encompasses products (including, but not limited to, butt ends, stubs, crowns and crystals) with the following primary magnesium contents:

(1) Products that contain at least 99.95% primary magnesium, by weight (generally referred to as ''ultra pure'' magnesium);

(2) Products that contain less than 99.95% but not less than 99.8% primary magnesium, by weight (generally referred to as ''pure'' magnesium); and

(3) Products that contain 50% or greater, but less than 99.8% primary magnesium, by weight, and that do not conform to ASTM specifications for alloy magnesium (generally referred to as ''off–specification pure'' magnesium).

''Off–specification pure'' magnesium is pure primary magnesium containing magnesium scrap, secondary magnesium, oxidized magnesium or impurities (whether or not intentionally added) that cause the primary magnesium content to fall below 99.8% by weight. It generally does not contain, individually or in combination, 1.5% or more, by weight, of the following alloying elements: aluminum, manganese, zinc, silicon, thorium, zirconium and rare earths.

Excluded from the scope of this order are alloy primary magnesium (that meets specifications for alloy magnesium), primary magnesium anodes, granular primary magnesium (including turnings, chips and powder) having a maximum physical dimension (i.e., length or diameter) of one inch or less, secondary magnesium (which has pure primary magnesium content of less than 50% by weight), and remelted magnesium whose pure primary magnesium content is less than 50% by weight.

Pure magnesium products covered by this order are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings 8104.11.00, 8104.19.00, 8104.20.00, 8104.30.00, 8104.90.00, 3824.90.11, 3824.90.19 and 9817.00.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

Analysis of Comments Received

All issues raised in the post–preliminary comments by parties in this review are addressed in the memorandum from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration, ''Issues and Decision Memorandum for the Final Results of Administrative Review of the Antidumping Duty Order on Pure Magnesium from the People's Republic of China,'' dated October 10, 2006 (''*Issues and Decision Memo*''), which is hereby adopted by this notice. A list of the issues which parties raised and to which we responded in the *Issues and Decision Memo* is attached to this notice as an appendix. The *Issues and Decision Memo* is a public document which is on file in the Central Records Unit (''CRU'') in room B–099 in the main Department building, and is accessible on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made changes in the margin calculations for TMI.

• In the preliminary results, we used Indian imports statistics from *World Trade Atlas* (''*WTA*'') to value dolomite. For the final results, we have determined to average dolomite prices from the financial statements of Indian Iron & Steel Company, Ltd. and Tata

Sponge Iron Ltd. *See Issues and Decision Memo* at Comment 1 for a thorough discussion of this issue and ''*Tianjin Magnesium International, Ltd. Program Analysis for the Final Results of Review*'' from Hua Lu, Case Analyst, through Robert Bolling, Program Manager, to the File, dated October 10, 2006 (''*Final Analysis Memorandum*.'').

• In the preliminary results, we calculated the surrogate value for flux No. 2 based on the HTSUS subheading for magnesium chloride, which is one of the constituent materials that make up flux No. 2. For the final results, we valued flux No. 2 based on the three compounds included in flux No. 2 (*i.e.*, magnesium chloride, sodium chloride and potassium chloride) according to their respective proportions. *See Issues and Decision Memo* at Comment 3 and *Final Analysis Memorandum*.

• In the preliminary results, we used the price for grade A coal from the 2003/2004 Tata Energy Research Institute's Energy Data Directory & Yearbook (''TERI data'') to value the coal used by TMI in the production of pure magnesium. For the final results, we have determined to value coal using grade C coal prices from the TERI data. *See Issues and Decision Memo* at Comment 4 and *Final Analysis Memorandum*.

Surrogate Country

In the *Preliminary Results*, we stated that we treat the PRC as a non–market economy (''NME'') country, and, therefore, we calculated normal value in accordance with section 773(c) of the Act, which applies to NME countries. Also, we stated that we had selected India as the appropriate surrogate country to use in this review for the following reasons: 1) India is at a level of economic development comparable to that of the PRC; 2) India is a significant producer of comparable merchandise; 3) India provides the best opportunity to use quality, publicly available data to value the factors of production; pursuant to section 773(c)(4) of the Act. *See Preliminary Results*, 71 FR 18069. For the final results, we made no changes to our findings with respect to the selection of a surrogate country.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to administrative review in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

In the *Preliminary Results*, we found that TMI demonstrated its eligibility for separate–rate status. For the final results, we continue to find that the evidence placed on the record of this review by TMI demonstrates an absence of government control, both in law and in fact, with respect to its exports of the merchandise under review and, thus, determine that TMI is eligible for separate–rate status.

Final Results of Review

We determine that the following dumping margin exists:

Exporter/manufacturer	Weighted–average margin percentage
TMI	0.00

Assessment Rates

The Department will issue appraisement instructions directly to U.S. Customs and Border Protection (''CBP'') within 15 days of publication of these final results of administrative review. In accordance with 19 CFR 351.212(b)(1), we have calculated importer–specific assessment rates for merchandise subject to this review. We divided the total dumping margins of reviewed sales by the total entered value of reviewed sales for each applicable importer to calculate *ad valorem* assessment rates. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each importer's entries under the relevant order during the POR.

To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer–specific *ad valorem* rates. For TMI, we aggregated the dumping margins calculated for all U.S. sales to each importer and divided this amount by the entered value of the sales to each importer. Where an importer–specific *ad valorem* rate is *de minimis*, we will order CBP to liquidate appropriate entries without regard to antidumping duties.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of pure magnesium from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for TMI is zero; (2) for previously reviewed or investigated companies not listed above that have a separate rate, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will be 108.26 percent, the current PRC–wide rate; and (4) the cash deposit rate for all non–PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties. This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: October 10, 2006.

David M. Spooner,

Assistant Secretaryfor Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

Comment 1: Surrogate Value for Dolomite

Comment 2: Surrogate Value for Ferrosilicon

Comment 3: Surrogate Value for Flux No. 2

Comment 4: Surrogate Value for Coal
Comment 5: Surrogate Value for Electricity

Comment 6: Ocean Freight

[FR Doc. E6–17267 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

(A–428–825)

Stainless Steel Sheet and Strip in Coils From Germany: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding its administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period July 1, 2005 to June 30, 2006.

EFFECTIVE DATE: October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Tyler R. Weinhold, Deborah Scott, or Robert James at (, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; Telephone: (202) 482–2657 and (202) 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2006, the Department published in the **Federal Register** its notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany. *See Antidumping of Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 71 FR 37890 (July 3, 2006). In response, on July 31, 2006, German producers ThyssenKrupp Nirosta GmbH (''ThyssenKrupp Nirosta''), ThysssenKrupp Nirosta Prazisionsband GmbH (''TKNP''), ThyssenKrupp VDM GmbH (''TKVDM'') (collectively, ''TKN''), along with their affiliated U.S. importers ThyssenKrupp Nirosta North America, Inc. (''TKNNA'') and ThyssenKrupp VDM USA, Inc. (''TKVDMUSA'') requested an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period of review July 1, 2005, through June 30, 2006. Petitioners in this case did not request an administrative review. On August 30, 2006, the Department initiated an administrative review of TKN. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 71 FR 51573 (August 30, 2006). On September 19, 2006, TKN submitted a letter withdrawing their request for an administrative review. See letter from TKN dated September 19, 2006.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provides that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines it is reasonable to extend the time limit for withdrawing the request. In response to TKN's withdrawal of their request for an administrative review, the Department hereby rescinds the administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Germany for the period July 1, 2005 through June 30, 2006.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for TKN at the cash deposit rate in effect on the date of entry for entries during the period July 1, 2005, through June 30, 2006.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is published in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: October 10, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–17269 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106C]

Endangered and Threatened Species; Initiation of a Status Review under the Endangered Species Act (ESA) for the Black Abalone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; initiation of a status review under the ESA.

SUMMARY: We, NMFS, announce the initiation of an ESA status review of the black abalone (*Haliotis cracherodii*), and we solicit information on the species.

DATES: Information on the black abalone must be received by December 18, 2006.

ADDRESSES: You may submit information on the black abalone via mail to Melissa Neuman, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA, 90802–4213, e-mail at *black.abalone@noaa.gov*, or fax to 562–980–4027. Include in the subject line of any e-mail the following document identifier: Black abalone review.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, (562) 980–4115, *melissa.neuman@noaa.gov*, or Marta Nammack, (301)713–1401, *marta.nammack@noaa.gov*.

SUPPLEMENTARY INFORMATION: We initiated an informal ESA status review of the black abalone on July 15, 2003, and we conducted a biological scoping workshop on January 29–30, 2004, which served to bring together individuals who have research experience with black abalone and/or experience conducting status reviews and/or stock assessments. A second workshop was convened on July 31–August 1, 2006, to discuss research

advancements since 2003, standardization of monitoring and assessment efforts, and gaps in our understanding of the species' long-term trends. At this time, we are formally announcing a status review of the black abalone. This species was harvested commercially and recreationally beginning in the mid–1800s with significant declines detected in the late 1970s, and withering syndrome continues to be a threat to the species.

Comments Solicited

To support this status review, we are soliciting information on the following topics: (1) long-term trends in abundance throughout the species range; (2) potential factors for the species' decline throughout its range (e.g., overharvesting, natural predation, disease, habitat loss etc.); (3) status of the black abalone fishery in Mexico; (4) implication of low population size for black abalone conservation; (5) factors important for black abalone management; (6) current estimate of population size and available habitat; (7) knowledge of various life history parameters (size/age at maturity, fecundity, length of larval stage, larval dispersal dynamics, etc.); and (8) projections on population growth or decline and risk of extinction. See **DATES** and **ADDRESSES** for guidance on how, by when, and where to send information.

Dated: October 10, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17247 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106D]

Endangered and Threatened Species; Revision of Species of Concern List, Candidate Species Definition, and Candidate Species List

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; revision of species of concern list, candidate species definition, and species considered as candidates.

SUMMARY: We, NMFS, revise: our species of concern list by adding three and removing six species; our definition of candidate species; and our candidate species list by adding four species and removing two. We solicit information and comments on the status of, and research and stewardship opportunities for, species of concern.

DATES: These actions are effective on October 17, 2006.

ADDRESSES: Send comments and documentation regarding the status of any species of concern to the Chief of Endangered Species, NMFS, Office of Protected Resources, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910. Comments may also be submitted by e-mail at *soc.list@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Species of Concern List.

FOR FURTHER INFORMATION CONTACT: Marta Nammack at (301)713–1401, ext. 180, *marta.nammack@noaa.gov*, for general information on the Species of Concern program; Kim Damon-Randall at (978) 281–9300 x6535, *kimberly.damon-randall@noaa.gov*, for information on the newly designated species of concern.

SUPPLEMENTARY INFORMATION: The regulations implementing section 4 of the ESA (5 U.S.C. 1533) define ''candidate'' as ''any species being considered by the Secretary [of Commerce or Interior] for listing as an endangered or a threatened species, but not yet the subject of a proposed rule'' (50 CFR 424.02). Such a designation does not confer any procedural or substantive protections of the ESA on the candidate species.

''Species of concern'' are species about which we have some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA (69 FR 19975; April 15, 2004). Species can qualify as both species of concern and candidate species. This discussion is limited to species under NMFS jurisdiction and does not apply to the regulatory practices of the U.S. Fish and Wildlife Service.

Definition of Candidate Species

On April 15, 2004, (69 FR 19975) we stated that we would limit use of the term ''candidate species'' to refer to (1) species that are the subject of a petition to list and for which we have determined that listing may be warranted, pursuant to section 4(b)(3)(A), and (2) species for which we have determined, following a status review, that listing is warranted (whether or not they are the subject of a petition). However, in order to be consistent, we intend to include non-petitioned species for which we have announced the initiation of a formal status review in our definition of candidate species. ''Candidate species'' will henceforth refer to (1) species that are the subject of a petition to list and for which we have determined that listing may be warranted, pursuant to section 4(b)(3)(A), and (2) species that are not the subject of a petition but for which we have announced the initiation of a status review in the **Federal Register**. In other words, any species that is undergoing a status review that we have announced in a **Federal Register** notice will be considered a candidate species.

Species of Concern

In our April 15, 2004, notice establishing the species of concern list (69 FR 19975), we described factors that we consider when identifying species of concern. Rationale for identifying each species of concern is available at *http://www.nmfs.noaa.gov/pr/species/concern*. We intend to publish annual updates of our species of concern list in the **Federal Register**. Table 1 at the end of this Notice lists the current species of concern. We are adding three species to and removing six species from the species of concern list. Also, two species are removed from the candidate species list, while four species of concern are added to the candidate list because they are undergoing formal status reviews.

Initiation of a status review does not mean that an ESA listing is imminent. Even after a status review has been conducted, it is possible that the available information will be insufficient to make a determination on the status of the species or that the information will indicate that an ESA listing is not warranted. Species of concern status serves to promote conservation and research efforts for these species.

Adding Three Species of Concern

We have identified three new species of concern: the porbeagle (*Lamna nasus*), alewife (*Alosa pseudoharengus*), and blueback herring (*Alosa aestivalis*). A short synopsis of their status and factors for decline are presented here. More detailed information on these species is available at *http://www.nmfs.noaa.gov/pr/species/concern/*.

The porbeagle is a slow growing coastal shark, with a relatively late age at maturity. It has been overfished over the last four decades, resulting in a 90 percent loss of the sexually mature population. In 2006 the International Union for Conservation of Nature and Natural Resources assessed the status of

this species as Vulnerable globally, Endangered in the Northwest Atlantic, and Critically Endangered in the Northeast Atlantic and Mediterranean. In May 2004, the Committee on the Status of Endangered Wildlife in Canada recommended to the Canadian Minister of Fisheries that this species be listed as endangered under the Species at Risk Act. While the Highly Migratory Species Fishery Management Plan includes fishery restrictions for sharks in the United States, none of these restrictions, except for an annual quota of 92 metric tons, are specific to the porbeagle.

The alewife and blueback herring are fishes collectively referred to as ''river herring.'' Due to difficulties in distinguishing the two species, they are often harvested and managed together. Landings statistics and the numbers of fish observed on annual spawning runs indicate a drastic decline in river herring populations throughout much of their range since the mid–1960s. Though factors responsible for this decline have yet to be identified, decreased access to spawning areas from the construction of dams, other impediments to migration, degradation of habitat, overfishing, and increased predation by recovering striped bass populations have likely contributed to their decline.

Removing Six Species

We have removed six species from the species of concern list. The southern distinct population segment (DPS) of green sturgeon (*Acipenser medirostris*), Lower Columbia River coho salmon evolutionarily significant unit (ESU) (*Oncorhynchus kisutch*), elkhorn coral (*Acropora palmata*), and staghorn coral (*Acropora cervicornis*) are being removed from this list because we have listed them as threatened (green sturgeon—67 FR 17757; April 7, 2006), (coho--70 FR 37160; June 28, 2005), (elkhorn coral and staghorn coral—71 FR 26852; May 9, 2006). We are removing the goliath grouper (Epinephelus itajara) from the species of concern list because the January 2006 status report written by a review team appointed by NMFS' Southeast Region indicated that the species no longer met the criteria for being a species of concern (January 17, 2006, memorandum from Roy Crabtree, Regional Administrator, Southeast Region, to Jim Lecky; February 10, 2006, concurrence by Jim Lecky, Director, Office of Protected Resources). And the Oregon Coast coho salmon (*Oncorhynchus kisutch*) ESU is no longer a species of concern because, after proposing to list the species as threatened under the ESA, we withdrew the proposal because of ongoing conservation efforts that are likely to improve the status of this species (71 FR 3033; January 19, 2006).

Candidate Species

Since we last published an updated species of concern list, there have also been changes to the candidate species list. Two former species of concern that were also candidate species because of ongoing status reviews are no longer species of concern or candidate species: the Lower Columbia River coho salmon ESU and the Oregon Coast coho salmon ESU. As described above, these species are no longer species of concern, and they are also no longer candidate species.

New Candidate Species

We are adding four species to the candidate species list. Since we are now including as candidate species those species for which we have initiated our own formal status reviews, the following three species are now considered to be candidate species: Atlantic sturgeon (*Acipenser oxyrinchus oxyrinchus*, this **Federal Register** notice), Atlantic salmon populations in Maine outside the range of the listed Gulf of Maine DPS (*Salmo salar*, 71 FR 55431; September 22, 2006), and black abalone (*Haliotis cracherodii*, announced in this issue of the **Federal Register**). The Cook Inlet DPS of the beluga whale (*Delphinapterus leucas*) is also a candidate species both because announced the initiation of a status review (71 FR 14836; March 24, 2006), and we also made a 90–day finding that the subsequent petition to list the species presented substantial information indicating that the petitioned action may be warranted (71 FR 44614; August 7, 2006).

Atlantic sturgeon

In 1998, in response to a petition to list Atlantic sturgeon under the ESA, NMFS and the U.S. Fish and Wildlife Service (FWS) published a determination that listing the species was not warranted at that time (63 FR 50187; September 21, 1998). NMFS also retained this species on its candidate species list in order to continue to monitor its status (63 FR 50211; September 21, 1998) and later transferred it to its newly established species of concern list (69 FR 19975; April 15, 2004). In 2005, following two separate workshops which highlighted ongoing concerns regarding the current status of Atlantic sturgeon, NMFS initiated a new status review. We formed a biological review team (BRT) comprised of representatives from NMFS, FWS, and the U.S. Geological Survey to compile information on the status of Atlantic sturgeon. The BRT drafted a status review report which is undergoing peer review at this time. We expect to use the status review report to make a determination on whether listing Atlantic sturgeon or distinct population segments of this species is warranted at this time.

Atlantic salmon

A BRT consisting of biologists from the Maine Atlantic Salmon Commission, Penobscot Indian Nation, NMFS, and FWS has completed a status review report for Atlantic salmon Status Review for Anadromous Atlantic Salmon (*Salmo salar*) in the United States, July 2006). This updates the 1999 status review report on which we based our determination to list the Gulf of Maine DPS of Atlantic salmon as endangered (65 FR 69459; November 17, 2000) by analyzing new information and assessing the status of other populations in Maine in relation to the Gulf of Maine DPS. We published a Notice of Availability for the status review report in the **Federal Register** (71 FR 55431; September 22, 2006), and we will publish our determination on whether a modification to the existing listing or a new listing is warranted.

Species of Concern Table

Table 1 contains a complete list of NMFS' species of concern. In Table 1, the common name appears as the first entry followed by the scientific name, the family name, and the area of concern. The area of concern denotes the general geographic range of the species or the vertebrate population for which concern has been expressed. Results of status reviews may narrow or expand the geographic areas or populations of concern in the future. Additionally, species of concern that are also considered to be candidate species because they are undergoing formal status reviews are denoted in boldface type. It is important to note that the species of concern list is limited by the information available. Any species of concern identified during the period between this revision and the next **Federal Register** publication will be listed on our web page (*http://www.nmfs.noaa.gov/pr/species/concern*).

Comments Solicited

We solicit information on the biology of, threats to, and relevant research and stewardship opportunities for species of concern (see **ADDRESSES**). This information will help guide us in future revisions of the species of concern list

and allocation of resources for species of concern. There is no deadline for submitting such information.

Dated: October 10, 2006.

James H. Lecky,

Director, Office of Protected Resources,National Marine Fisheries Service.

TABLE 1 - SPECIES OF CONCERN LIST

Common Name	Scientific Name	Family	Area of Concern [1]
Marine Mammals			
beluga whale	*Delphinapterus leucas*	Monodontidae	Pacific-AK (Cook Inlet population).
Fishes			
sand tiger shark	*Odontaspis taurus*	Odontaspididae	Atlantic, Gulf of Mexico.
porbeagle	*Lamna nasus*	Lamnidae	Atlantic, Newfoundland, Canada to New Jersey
dusky shark	*Carcharhinus obscurus*	Carcharhinidae	Atlantic, Gulf of Mexico-Western North Atlantic DPS.
night shark	*Carcharinus signatus*	Carcharhinidae	Atlantic, Gulf of Mexico.
largetooth sawfish	*Pristis pristis*	Pristidae	Atlantic-TX, FL.
barndoor skate	*Pristis pristis*	Rajidae	Atlantic-Newfoundland, Canada to Cape Hatteras, NC.
thorny skate	Raja radiata	Rajidae	Atlantic-West Greenland to NY.
Atlantic sturgeon	*Acipenser oxyrinchus oxyrinchus*	Acipenseridae	Atlantic-Labrador to St. Johns R., FL; anadromous.
green sturgeon	*Acipenser medirostris*	Acipenseridae	Pacific-northern DPS (including coastal spawning populations from the Eel River north, to the Klamath and Rogue rivers); anadromous.
blueback herring	*Alosa aestivalis*	Clupeidae	Atlantic-Cape Breton, Nova Scotia, to St. John's River, FL.
Alabama shad	*Alosa alabamae*	Clupeidae	Gulf of Mexico-AL, FL, anadromous.
alewife	*Alosa pseudoharengus*	Clupeidae	Atlantic-Newfoundland to North Carolina.
coho salmon	*Oncorhynchus kisutch*	Salmonidae	Pacific-Puget Sound/Strait of Georgia coho ESU; anadromous.
steelhead trout	*Oncorhynchus mykiss*	Salmonidae	Pacific-OR Coast ESU; anadromous.
Chinook salmon	*Oncorhynchus tshawytscha*	Salmonidae	Pacific-Central Valley fall and late fall-run ESU
Atlantic salmon	*Salmo salar*	Salmonidae	Atlantic-Gulf of Maine (other populations in streams and rivers in Maine outside the range of the listed Gulf of Maine Atlantic salmon DPS); anadromous.
rainbow smelt	*Osmerus mordax*	Osmeridae	Atlantic-Labrador to NJ; anadromous.
cusk	*Brosme brosme*	Gadidae	Atlantic-Gulf of Maine.
Pacific hake	*Merluccius productus*	Gadidae	Pacific-Georgia Basin DPS.
mangrove rivulus	*Rivulus marmoratus*	Aplocheilidae	Atlantic-FL, estuarine.
saltmarsh topminnow	*Fundulus jenkinsi*	Cyprinodontidae	Atlantic-TX, LA, MS, AL, FL.
key silverside	*Menidia conchorum*	Atherinidae	Atlantic-Florida Keys.
opossum pipefish	*Microphis brachyurus lineatus*	Syngnathidae	Atlantic-Florida (Indian River Lagoon).
striped croaker	*Bairdiella sanctaeluciae*	Sciaenidae	Atlantic-FL, Antilles and Caribbean from Costa Rica to Guyana.
humphead wrasse	*Cheilinus undulatus*	Labridae	Indo-Pacific-Red Sea to the Tuamotus, north to the Ryukyus, east to Wake Islands, south to New Caledonia, throughout Micronesia; includes U.S. territories of Guam and American Samoa.

TABLE 1 - SPECIES OF CONCERN LIST—Continued

Common Name	Scientific Name	Family	Area of Concern [1]
bumphead parrotfish	*Bolbometopon muricatum*	Scaridae	Indo-Pacific-Red Sea and East Africa to the Line Islands and Samoa; north to Yaeyama, south to the Great Barrier Reef and New Caledonia; Paulau, Caroline, Mariana in Micronesia; in U.S. it occurs in Guam, American Samoa, CNMI and the Pacific Remote Island Areas (Wake Islands).
Atlantic wolffish	*Anarhichas lupus*	Anarhichadidae	Atlantic-Georges Bank and western Gulf of Maine.
white marlin	*Tetrapturus albidus*	Istiophoridae	Atlantic.
cowcod	*Sebastes levis*	Scorpaenidae	Pacific-Central OR to central Baja California and Guadalupe Island, Mexico.
bocaccio	*Sebastes paucispinis*	Scorpaenidae	Pacific-Southern DPS (Northern CA to Mexico).
Atlantic halibut	*Hippoglossus hippoglossus*	Pleuronectidae	Atlantic-Labrador to southern New England.
speckled hind	*Epinephelus drummondhayi*	Serranidae	Atlantic-NC to Gulf of Mexico.
warsaw grouper	*Epinephelus nigritus*	Serranidae	Atlantic-MA southward to Gulf of Mexico.
Nassau grouper	*Epinephelus striatus*	Serranidae	Atlantic-NC southward to Gulf of Mexico.
Brachiopoda			
inarticulate brachiopod	*Lingula reevii*	Lingulidae	Pacific-Hawaii, only Kaneohe Bay.
Mollusks			
pink abalone	*Haliotis corrugata*	Haliotidae	Pacific-Point Conception, CA, to Bahia de Tortuga, Baja California.
black abalone	*Haliotis cracherodii*	Haliotidae	Pacific-OR, CA, Baja California.
green abalone	*Haliotis fulgens*	Haliotidae	Pacific-Point Conception, CA, to Bahia Magdalena, Baja California.
pinto abalone	*Haliotis kamtschatkana*	Haliotidae	Pacific-Sitka, AK, to Point Conception, CA.
Anthozoans (Corals)			
Hawaiian reef coral	*Montipora dilitata*	Acroporidae	Pacific-Hawaii (Kaneohe Bay, Midway atoll, and Maro Reef).
ivory bush coral	*Oculina varicosa*	Oculinidae	Atlantic-West Indies, Bermuda, NC, FL, Gulf of Mexico, Caribbean.

[1] Defines the general geographic area or populations of concern for the species.
DPS = distinct population segment, which is a species for purposes of the ESA.
ESU = evolutionarily significant unit, which is a DPS or species for purposes of the ESA

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101206A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject exempted fishing permit (EFP) application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). Based on preliminary review of this project, a Categorical Exclusion (CE) from requirements to prepare either an Environmental Impact Statement (EIS) or an Environmental Assessment (EA) under the National Environmental Policy Act (NEPA) appears to be justified. However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow two commercial fishing vessels to conduct

fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP, which would enable the applicants to investigate the feasibility of using a trawl net with buoyant ground cables and a buoyant sweep to reduce seabed contact and improve species selectivity, would allow for exemptions from the FMP as follows: Gulf of Maine (GOM) Rolling Closure Areas II, III, IV, and V for two vessels; and an exemption from the days-at-sea (DAS) effort control requirements for one vessel.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before November 1, 2006.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the Buoyant Ground Cables Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135, or submitted via e-mail to: *DA6–213@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Mark Grant, Fishery Management Specialist, (978) 281–9145, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: A complete application for an EFP was submitted on August 21, 2006, by Kelo Pinkham of the F/V Jeanne C for a joint project with Dana Morse, of Maine Sea Grant, that is funded by the Northeast Consortium (NEC). The primary goal of this research is to develop and test a trawl net with buoyant ground cables and a buoyant sweep to reduce seabed contact and increase species selectivity. The intent of the applicants is to demonstrate that the experimental net, if successful, could potentially be suitable as an alternate gear for vessels fishing in areas requiring a haddock separator trawl and/or fishing areas of hard bottom with the use of mid-water doors.

The project would be conducted during the fall of 2006 and spring of 2007 and would include flume tank trials and 25 days of at-sea trials. An experimental otter trawl net, which would have floats incorporated along both the ground cables and the sweep, as well as drop chains integrated along the sweep, would first be constructed and flume tested. After the flume trials, one vessel would conduct 5 days of at-sea research using video cameras and a net-mind system to tune the performance of the net. A net-mind system is a net monitoring system that enables monitoring and managing the performance of the trawl. During these first 5 at-sea days, the net would have an open codend. After determining the best configuration of ground cables, floats, drop chains, and sweep position using the cameras and net-mind system, the experimental net would be transferred to the second vessel for fishing trials. This second vessel would conduct an additional 20 at-sea days of research, during which the experimental net would be compared with a standard design otter trawl net as a control during experimental fishing. During these comparative fishing trials, this single vessel would conduct four 2-hour tows per day, alternating each tow between fishing the experimental net and fishing the control net. Cameras mounted on the nets and on tow sleds would be used to monitor the seabed before and after towing, as well as net performance and fish behavior in the mouth of the net.

All fish caught would be weighed and as many fish as possible would be measured. All undersized fish, and fish that cannot legally be retained, would be returned to the sea as quickly as practicable after measurement and examination. The overall catch estimates expected for this project can be found in Table 1. The applicants anticipate that a total of 20,000 lb (9,072 kg) of haddock and pollock (combined), the two target species, would be harvested throughout the course of the study, along with 14,000 lb (6,350 kg) of non-targeted catch and discards, including 8,000 lb (3,629 kg) of GOM cod. The estimated cod catch is 66 percent of the current daily possession limit of 600 lb (272 kg) (50 percent of the daily limit of 800 lb (363 kg) proposed in Framework Adjustment 42) for the proposed number of DAS. All legal-sized fish, within the possession limit, would be sold, with the proceeds returned to the NEC for the purpose of enhancing future research.

TABLE 1: ESTIMATED TARGETED CATCH, NON-TARGETED CATCH AND DISCARD BY SPECIES

Species	Targeted Catch	Non-Targeted Catch and Discards
Haddock	10,000 lb (4,536 kg)	0
Pollock	10,000 lb (4,536 kg)	0

TABLE 1: ESTIMATED TARGETED CATCH, NON-TARGETED CATCH AND DISCARD BY SPECIES—Continued

Species	Targeted Catch	Non-Targeted Catch and Discards
Cod	0	8,000 lb (3,629 kg)
Gray Sole	0	2,000 lb (907 kg)
American Plaice	0	2,000 lb (907 kg)
Monkfish	0	2,000 lb (907 kg)

All at-sea research would be conducted from two fishing vessels, each of which would be fishing in a different area. This EFP would cover the F/V Ocean Reporter (permit # 221596, O.N. 694848) and the F/V Jeanne C (permit # 230524, O.N. 610415). The F/V Ocean Reporter would conduct the 5 days of at-sea video and gear tuning work in the area between the western border of the Western GOM Closure Area (42°15′ N. lat., 70°15′ W. long.; and 43°15′ N. lat., 70°15′ W. long.) and the shore. The F/V Jeanne C would conduct the 20 days of at-sea experimental fishing in an area northeast of the Western GOM Closure Area and northwest of the Cashes Ledge Closure Area (see Table 2). Both vessels would fish exclusively outside the Western GOM Closed Area.

TABLE 2: COORDINATES FOR EXPERIMENTAL FISHING AREA BY F/V JEANNE C

Point	N. Lat.	W. Long.
1	43°38′	69°40′
2	43°38′	69°21′
3	43°20′	69°40′
4	43°20′	69°21′
5	43°38′	69°40′

The applicants have asked for an exemption to the regulations at 50 CFR 648.81(f)(1)(ii) through (v), GOM Rolling Closure Areas II, III, IV, and V, for both the F/V Ocean Reporter and F/V Jeanne C (for 5 DAS and 20 DAS, respectively) due to a belief that there will be a better mixture of flounders, pollock, haddock, and cod for testing the experimental gear present in the waters of the western GOM during these seasonal closures. Operation during these seasonal

closures would also increase the availability of the commercial vessels to work with scientists on the project because these coastal day boats are unable to conduct normal commercial fishing operations during these seasonal closures.

The applicants have also requested an exemption to the DAS regulations at 50 CFR 648.82(a) for the F/V Ocean Reporter while conducting the 5 at-sea days of video and gear tuning work because the researchers would tow the nets with the codend open. With the exception of a small number of fish that could be gilled by the net mesh, no fish would be removed from the water during these 5 at-sea days of video and gear tuning work. During the 20 at-sea days of comparative fishing trials, the F/V Jeanne C would use A DAS and would be subject to all day and trip possession limits.

The applicants may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 12, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100306G]

Incidental Takes of Marine Mammals During Specified Activities; Maintenance Dredging Around Pier 39, San Francisco, California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; proposed incidental take authorization; request for comments.

SUMMARY: NMFS has received an application from the Bay Marina Management Incorporated (BMMI) for the re-issuance of an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by Level B harassment only, incidental to dredging on the west side of the Pier 39 Marina on the San Francisco waterfront, CA. NMFS issued an IHA for these activities in October, 2005; however, BMMI will be unable to complete the work by the time the 2005 IHA expires on October 16, 2006. Therefore, BMMI has requested a new IHA to cover the completion of the previously analyzed and authorized action. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an IHA to BMMI for the take, by Level B Harassment only, of small numbers of California sea lions and Pacific harbor seals.

DATES: Comments and information must be received no later than November 16, 2006.

ADDRESSES: Comments on the application should be addressed to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225. The mailbox address for providing email comments is *PR1.100306G@noaa.gov*. NMFS is not responsible for e-mail comments sent to addresses other than the one provided here. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.

A copy of the application containing a list of the references used in this document may be obtained by writing to the address specified above, telephoning the contact listed below (see **FOR FURTHER INFORMATION CONTACT**), or visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*.

Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext 166.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and that the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On September 14, 2006, NMFS received a request from BMMI to re-issue an IHA for the take, by harassment, of small numbers of California sea lions (*Zalophus californianus*) and Pacific harbor seals (*Phoca vitulina*) incidental to the maintenance dredging the I, J, and K Docks on the west side of Pier 39 Marina on the San Francisco waterfront, California. NMFS issued an IHA for these activities in October, 2005 (70 FR 69955); however, BMMI will be unable to complete the work by the time the 2005 IHA expires on October 16, 2006. Therefore BMMI has asked for a new IHA to cover the completion of the previously analyzed and authorized action.

Description of the Activity

BMMI will complete the maintenance dredging begun before the previous IHA expired using a small, self-contained clamshell-style crane barge between docks I, J, and K at the Pier 39 west marina. These maintenance measures are necessary to maintain safe navigation depths at the marina, which currently has reduced water depths attributed to the accretion of bay sediment. The dredging at Pier 39 will remove sediment to create water depths in the project area of 9 ft (2.7 m) Mean Lower Low Water (MLLW), plus an additional two-foot overdredge allowance. Dredging design area limits (footprints) include the faces, approaches, and entrance channels to each berthing area up to the limit of the adjacent pier. Dredging will occur between June 1 and November 30 to avoid impacts to steelhead trout and chinook salmon.

The completion of the dredging operations at the Pier 39 west marina will occur in the last two weeks of November 2006, if at all possible, or in the summer of 2007. The complete project, which was authorized in the 2005 IHA, was expected to take approximately one to two weeks to complete. This IHA will cover any part of that work that was unable to be completed prior to October 17, 2006, and no work will be conducted that was not already analyzed in the previous IHA. Dredge machinery will operate from 8 a.m. to 3:30 p.m. daily. Approximately 13,000 yd^3 (9,939 m^3) of material will be removed. Dredged material will be tested for pollutants and toxins by the Dredge Material Management Office prior to approval to begin dredging, and dredged materials will be deposited in accordance with local, state and Federal regulations. Once removed, the dredged material will be transferred to Piers 96/98, which are owned and operated by the Port of San Francisco, and from there it will be disposed of at an approved upland disposal site.

The proposed dredging of the Pier 39 west berthing area will focus on the channels and slips of I and J docks and half of the channel between J and K docks. The original K dock was destroyed by the combined weight of hundreds of California sea lions that frequently use the area as a haul-out. Pier 39 replaced the damaged dock with a number of ten by twelve-foot floats for the sea lions to use. Since there are no actual berthing sites at K dock, no dredging will be necessary in the area immediately surrounding or under K dock. The crane barge will be situated at the furthest distance possible from K dock during each dredging episode. The closest that the barge will be to the K dock haul-out is when dredging the channel between J and K docks. When the barge is dredging this channel it will be moored to the bayside of J dock and extend the clamshell dredge arm out into the channel, towards K dock. Since the distance between J and K docks is 100 ft (30 m) and the barge is 30 ft (9 m) wide, it will never be positioned closer than 50 ft (15 m) to K dock at any time during the dredging project.

Description of Habitat and Marine Mammals Affected by the Activity

The marine mammal species known to be present at the Pier 39 Marina area are the California sea lion (*Zalophus californianus*) and the Pacific harbor seal (*Phoca vitulina*). Since 1993, a single adult male Steller sea lion (*Eumetopias jubatus*) has been observed hauled out on K dock intermittently during the months of July and August, and occasionally in September (30 sightings in the last 10 years). However, this project will not affect the Steller sea lion because dredging activities will be halted if a Steller sea lion is observed.

Additional information on these species can be found in Marine Mammal Stock Assessment Reports, which are available online at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

California Sea Lions

California sea lions range from southern Mexico to southwestern Canada. In the United States, they breed during July after pupping in late May to June, primarily in the Channel Islands of California. Most individuals breed on the Channel Islands off southern California and off Baja and mainland Mexico, although a few pups have been born on Ano Nuevo Island and this year a pup was born on the docks at Monterey and subsequently transferred to Ano Nuevo Island with its mother. Following the breeding season on the Channel Islands, most adult and sub-adult males migrate northward to central and northern California and to the Pacific Northwest, while most females and young animals either remain on or near the breeding grounds throughout the year or move southward or northward, as far as Monterey Bay.

Since nearing extinction in the early 1900's, the California sea lion population has increased and is now growing at a rate of 5.4 to 6.1 percent per year (based on pup counts) with an estimated minimum population of 138,881 animals. Actual population numbers may be as high as 237,000 to 244,000 animals. The population is not listed as ''endangered'' or ''threatened'' under the Endangered Species Act (ESA), nor is this species listed as ''depleted'' or as a ''strategic stock'' under the MMPA.

California sea lions first appeared at Pier 39 in September 1989. Numbers of hauled-out sea lions were relatively low the first year and K Dock was only used as a haul out from late summer through the winter. Within a few years, larger numbers of sea lions were observed at K Dock and they began using the haul-out throughout the year. The Marine Mammal Center (MMC) began monitoring California sea lions at Pier 39 in the late 1990's and counts indicate peak usage of K dock at Pier 39 in May and early June, just prior to the breeding season. Although numbers decrease during mid-summer (when most adults relocate to the rookeries for pupping and breeding) some sea lions of all age classes remain in the area and continue to haul out at Pier 39. Within the dredging work window (June 1 to November 30) the largest numbers of California sea lions are found at K Dock in the late summer and fall. The highest number of individuals ever observed at once between June 1 and November 30 at Pier 39 to date was 1244, in August of 2003. If the number of individuals observed at one count is averaged by month, from June to November, since 2000, the averages range from 169 for July to 709 in September. Since monitoring began in 1991, only 10 California sea lion pups have been observed at Pier 39, in 1997 and 1998. These pups, which were all weaned, most likely hauled out at K Dock due to El Nino, and pups are not expected at the project site in ''normal'' years.

Pacific Harbor Seals

Although not commonly observed at Pier 39, Pacific harbor seals have been documented as visitors to K dock numerous times in the past decade. Harbor seals range from Baja California in Mexico northward to the Aleutian Islands of Alaska. The population estimate for the California stock is 34,233 individuals (Caretta *et al.*, 2005) and is relatively stable.

Harbor seals inhabit coastal waters within their range and prefer sheltered bays and inlets to the exposed coastline. Daily haul-out behavior of harbor seals is typically dependent on the tides, weather and time of day. Harbor seals exhibit seasonal variation in reproductive timing depending on geography. The pupping season for California populations is in the spring, with populations in the San Francisco

Bay typically bearing young from March 15 through May 31 (Green *et al.*, 2001). There are two active pupping sites in the San Francisco Bay, Mowry Slough in the South Bay and Castro Rocks in the North Bay. Pups have been observed at Yerba Buena Island and Corte Madera Marsh in the San Francisco Bay. No births have been witnessed at these locations, but Yerba Buena is thought to be a potential pupping site. No harbor seal pups have ever been seen at Pier 39.

Annual counts of harbor seals at Pier 39 range from 0 seals observed in 1999 and 2004, to a high of nine observations in 2000 for a total of 28 observations between 1997–2004. No more than two harbor seals have been observed hauled out simultaneously at any given time at K Dock. No harbor seals have been observed hauling out at Pier 39 July through September. No pups have been observed at Pier 39. Observations by MMC volunteers indicate that observed harbor seals at Pier 39 tend to distance themselves from the California sea lions hauling out in the vicinity.

Potential Effects of Activities on Marine Mammals

The applicant is authorized to take small numbers of California sea lions and Pacific harbor seals, by Level B harassment only, incidental to the dredging activities described previously. Level B harassment may occur if hauled animals flush the haulout and/or move to increase their distance from dredging-related activities, such as noise associated with dredging, presence of a crane barge, the presence of workers, or unfamiliar activity in proximity to the haulout site. This disturbance from acoustic and visual stimuli is the principal means of marine mammal taking associated with these activities.

Sudden brief noises have been shown to elicit startle reactions in some pinnipeds. Novel looming visual stimuli may induce similar startle reactions in pinnipeds. Daily engine starts and movements of the dredge bucket and vessel may induce startled and/or flight behavior in marine mammals using K dock as a haul out. However, this area has become a tourist spot for viewing sea lions, and the current population of animals utilizing K dock is accustomed to human activities and regular noise levels from people, traffic, use of nearby boat slips, and other marine operations. If animals do flush into the water, they may return to the haul-out site immediately, stay in the water for a length of time and then return to the haul-out, or temporarily haul-out at another site. Many factors contribute to the degree of behavioral modification, if any, including seasonality, group composition of the pinnipeds, type of activity they are engaged in and what noises they may be accustomed to experiencing. Short-term reactions such as startle or alert reactions are unlikely to disrupt behavior patterns such as migrating, breeding, feeding and sheltering, nor would they be likely to result in serious injury to marine mammals.

The small, self-contained, clamshell dredge used for this activity may produce noise of a sufficient level to behaviorally harass marine mammals at K dock. Measured sound exposure levels (SELs) of similar equipment ranged between 75–88 dBA (re 20 microPa) measured at 50 feet (the closest distance that the dredge unit will be to K dock) (Boeing, 2005). Results of an ongoing study at Vandenberg Air Force Base of the effects of rocket launches on pinnipeds indicate that the percentage of Pacific harbor seals leaving the haul-out increases with noise level up to an SEL of approximately 100 dBA, after which almost all seals leave, although recent data have shown that an increasing percentage of seals have remained on shore during the noise, and those that remain are adults. Though harbor seals are more sensitive to audio stimuli than sea lions, these results indicate that animals are flushed at an SEL less than 100 dBA, and it is possible that marine mammals at K Dock may modify their behavior as a result of the lesser dredge noise.

If startle reactions were accompanied by large-scale movements of marine mammals, such as stampedes into the water, the disruption could escalate into Level A harassment and could result in injury of individuals, especially if pups were present. However, due to the uniqueness of this particular haul-out area, the unlikely presence of pups, and the proposed shut-down procedures should pups be sighted, NMFS believes there is a very low likelihood of such injury occurring at the Pier 39 site. Specifically, the haul-out consists of many separate floating platforms that can hold up to about 25 marine mammals each. If disrupted to the point of flushing off the platforms, pinnipeds can quickly leap or roll into the water in any direction off the relatively small platforms, avoiding a dangerous stampede-like situation that may occur at normal haul-out locations such as exposed rocks. Additionally, marine mammal pups use this haul-out very infrequently (approximately 10 pups have been sighted at K Dock, in 1997 and 1998, during El Nino), further reducing potential harm to the species.

Over the last 13 years, BMMI has observed that sea lions either ignore various unfamiliar intrusions and remain hauled out, or adapt to them and eventually become habituated and return to their normal behavior. Disturbance from these proposed dredging activities is expected to have a only a short-term negligible impact to a small number of California sea lions relative to their population size and a few Pacific harbor seals. At a maximum, short-term impacts are expected to result in a temporary reduction in utilization of K dock as a haulout site while work is in progress or until seals habituate to the disturbance. The project is not expected to result in any permanent reduction in the number of animals at Pier 39. NMFS agrees with BMMI that effects will be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment.

Mitigation

To minimize disturbance of marine mammals from visual and acoustic stimuli associated with the dredging activities, BMMI will use a small (relative to the range of sizes of equipment that could accomplish the task) clamshell dredge that can easily target the specific areas to be dredged. The smaller equipment will also minimize the amount of turbidity resulting from the dredging activities. The dredge material will be immediately loaded onto a barge and transported to a nearby terrestrial disposal site at Piers 96 and 98, which will allow for a shorter project duration.

When not in use, the clamshell dredge and dredge barge will be parked as far as feasible from the K Dock. After starting engines in morning, the clamshell dredge will be moved as slowly as possible to the area to be dredged and the dredge head lowered slowly and carefully into the water.

As mentioned previously, if a Steller sea lion of any age or a marine mammal pup of any species is spotted at any time during dredging operations, operations will cease until the animal has left the area.

Monitoring

The K dock haulout will be monitored periodically during dredging activities by two NMFS-approved observers according to the following schedule:

(1) During the week prior to the commencement of dredging activities, morning counts will be taken every morning at the same time. One afternoon count will be taken at approximately the same time the

dredging is scheduled to stop in the following days.

(2) During the dredging operations:

- One count will be taken every morning before dredging work begins and every afternoon once operations cease.

- On the first day of dredging and on one other day near the end of dredging operations, monitors will be present all day (starting one hour before operations begin and remaining until 2 hours after operations cease) and they will document specific behaviors as they relate to specific aspects of the dredging operations and other activities. An additional count will be conducted 2 hours after dredging operations cease. Rates of departure and arrival of animals from/to the haulout will be noted.

(3) Following completion of the dredging:

- Morning counts (taken at approximately same time as those taken previously (See 1)) will be made every day for a week.

- An afternoon count will be conducted the day after dredging ceases and on the last day of the post-dredging monitoring.

(4) During all monitoring periods the following data will be recorded: date, time, observer, tidal height, species present, maximum number of animals hauled out, number of adults and sub-adults, number of males and females (if possible), any observed behavioral disturbances to the animals, and the number of animals disturbed (for example, if animals flushed, reports should include the number of animals that returned to the water, and those that remained hauled out). During periods of dredging a description of dredging activities will also occur (including location of dredge, i.e., between J and K Docks, or between I and J Docks).

Reporting

A draft report will be submitted to the NMFS Southwest Assistant Regional Administrator for Protected Resources and to the NMFS Division of Permits, Conservation, and Education, Office of Protected Resources, within 90 days after project completion. A final report will be submitted within 30 days of receiving NMFS' comments, if any, on the draft report. The Report will contain, analyze, and summarize the information required under Monitoring, above. BMMI will share data collected as a result of these monitoring activities with other interested parties, such as the Marine Mammal Center and other boat marinas.

Numbers of Marine Mammals Expected to be Harassed

The effects of the proposed dredging activities are expected to be limited to short-term startle responses and localized behavioral changes. NMFS anticipates that small numbers of California sea lions and Pacific harbor seals will effected.

The highest number of California sea lions ever counted at one time on the K Dock between June 1 and November 30 was 1244 individuals in August 2003. The average number of individuals counted at one time within the work window since 2000 is lowest in July (169) and highest in September (709). Based on an average of 169 to 709 animals over the maximum of 14 days, NMFS estimates that California sea lions could be exposed to audio or visual stimulus likely to cause harassment between 2360 and 9930 times. However, based on review of the Pier 39 observer logs maintained over the last 14 years, which indicate that sea lions may remain in the area and haul out for several days in a row at the K dock, NMFS estimates that between 1180 to 4965 individual California sea lions (approximately 0.5 to 2 percent of the population) will be harassed. These are small numbers relative to the size of the affected species or stock.

The highest total number of harbor seals ever seen in one month between June 1 and November 30 was 3 in November of 1997. NMFS anticipates that no more than 3 Pacific harbor seals will be harassed by this activity (less than 0.01 percent of the population). These are small numbers relative to the size of the affected species or stocks.

Potential Effects of Proposed Activities on Marine Mammal Habitat

NMFS anticipates that the proposed action will result in minor and short-term effects on marine mammal habitat, including a temporary increase in the turbidity in the area of the dredging and a temporary decrease in the quality of K dock as a haul-out site as a result of increased visual and audio stimuli.

Potential Effects of Proposed Activities on Subsistence Needs

There are no subsistence uses for California sea lions or Pacific harbor seals in California waters, and thus, there are no anticipated effects on their availability for subsistence uses.

Endangered Species Act

Though a single Steller sea lion has infrequently been sighted at the K Dock, BMMI plans to cease dredging operations immediately if one is seen, and not begin dredging again until the animal has left the area of its own volition. NMFS does not anticipate any impacts to Steller sea lions to result from the issuance of the IHA.

In the 1998 programmatic Biological Opinion addressing dredging in San Francisco Bay, NMFS established a June 1 to November 30 work window for dredging activities in the San Francisco Bay to avoid impacts to steelhead trout and Chinook salmon. BMMI proposes to dredge between June 1 and November 30, and therefore NMFS does not anticipate any impacts to ESA-listed fish.

National Environmental Policy Act (NEPA)

NMFS prepared an Environmental Assessment (EA) on the Issuance of an IHA for the Dredging at Pier 39 and issued a Finding of No Significant Impact on October 13, 2005. A copy of the EA and FONSI are available upon request (see **ADDRESSES**).

Preliminary Conclusions

Based on the preceding information, and provided that the proposed mitigation and monitoring are incorporated, NMFS has preliminarily determined that the proposed completion of the dredging activities described in this document and authorized in the 2005 IHA may result in short-term and localized changes in behavior by small numbers of California sea lions and Pacific harbor seals. In addition, no take by injury or death is anticipated, and take by harassment will be at the lowest level practicable due to incorporation of the mitigation measures mentioned previously in this document. While behavioral modifications may be made by the pinnipeds, including temporarily vacating the K Dock haulout, NMFS has preliminarily determined that these proposed takings will have a negligible impact on California sea lions and Pacific harbor seals.

Proposed Authorization

NMFS proposes to issue an IHA to BMMI for the take, by Level B harassment only, of small numbers of California sea lions and Pacific harbor seals incidental to the completion of the previously authorized maintenance dredging around I, J, and K Docks at Pier 39 in San Francisco, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

Dated: October 10, 2006.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–17240 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 101106B]

U.S. Climate Change Science Program Synthesis and Assessment Product Draft Prospectus 2.4

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for public comments.

SUMMARY: The National Oceanic and Atmospheric Administration publish this notice to announce the availability of the draft Prospectus for one of the U.S. Climate Change Science Program (CCSP) Synthesis and Assessment Products for public comment. This draft Prospectus addresses the following CCSP Topic:

Product 2.4 Trends in emissions of ozone-depleting substances, ozone layer recovery, and implications for ultraviolet radiation exposure and climate change.

After consideration of comments received on the draft Prospectus, the final Prospectus along with the comments received will be published on the CCSP web site.

DATES: Comments must be received by November 16, 2006.

ADDRESSES: The draft Prospectus is posted on the CCSP Program Office web site. The web addresses to access the draft Prospectus is:

Product 2.4 *http://www.climatescience.gov/Library/sap/sap2–4/default.htm*

Detailed instructions for making comments on the draft Prospectus is provided with the Prospectus. Comments should be prepared in accordance with these instructions.

FOR FURTHER INFORMATION CONTACT: Dr. Fabien Laurier, Climate Change Science Program Office, 1717 Pennsylvania Avenue NW, Suite 250, Washington, DC 20006, Telephone: (202) 419 3481.

SUPPLEMENTARY INFORMATION: The CCSP was established by the President in 2002 to coordinate and integrate scientific research on global change and climate change sponsored by 13 participating departments and agencies of the U.S. Government. The CCSP is charged with preparing information resources that support climate-related discussions and decisions, including scientific synthesis and assessment analyses that support evaluation of important policy issues. The Prospectus addressed by this notice provides a topical overview and describes plans for scoping, drafting, reviewing, producing, and disseminating one of 21 final synthesis and assessment Products that will be produced by the CCSP.

Dated: October 11, 2006.

William J. Brennan,

Deputy Assistant Secretary of Commerce for International Affairs, and Acting Director, Climate Change Science Program.

[FR Doc. E6–17244 Filed 10–16–06; 8:45 am]

BILLING CODE 3510–12–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 3, 2006.

PLACE: 1155 21st., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

FOR MORE INFORMATION CONTACT: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–8753 Filed 10–13–06; 2:04 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 17, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–8754 Filed 10–13–06; 2:04 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, November 24, 2006.

PLACE: 1155 21st., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance matters.

CONTACT PERSON FOR MORE INFORMATION: Eileen A. Donovan, 202–418–5100.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. 06–8755 Filed 10–13–06; 2:04 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: This is published to fulfill the requirements of section 155 of the Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/DBO/CFM, (703) 604–6575.

The following is a copy of a Memorandum for Record.

Dated: October 10, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

OCT 1 0 2006

MEMORANDUM FOR RECORD:

On or about 30 August 2006, Congress was notified of proposed Letters of Offer and Acceptance involving the Department of Air Force and the Government of Israel.

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

[FR Doc. 06–8717 Filed 10–16–06; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF EDUCATION

National Mathematics Advisory Panel

AGENCY: National Mathematics Advisory Panel, Department of Education.

ACTION: Notice of open meeting & public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting, including a public hearing, with members of the National Mathematics Advisory Panel. The notice also describes the functions of the Panel. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Sunday, November 5, 2006, and Monday, November 6, 2006.

Times: Sunday, November 5, 2006, 4–5 p.m. Monday, November 6, 2006, 8:15–11:45 a.m.; 12:45–2:45 p.m.; and 4:30–5:15 p.m.

ADDRESSES: All meetings and the open session for public comment will be held on the campus of Stanford University at the Schwab Residential Center, 680 Serra Street, Stanford, CA 94305–6090.

FOR FURTHER INFORMATION CONTACT: Tyrrell Flawn, Executive Director, National Mathematics Advisory Panel, 400 Maryland Avenue, SW., Washington, DC 20202; telephone: (202) 260–8354.

SUPPLEMENTARY INFORMATION: The Panel was established by Executive Order 13398. The purpose of this Panel is to foster greater knowledge of and improved performance in mathematics among American students, in order to keep America competitive, support American talent and creativity, encourage innovation throughout the American economy, and help State, local, territorial, and tribal governments give the nation's children and youth the education they need to succeed.

The Open Session on November 5 will include testimony from the College Board and ACT on American student readiness for college-level mathematics. The Open Sessions on November 6 will include testimony on the National Assessment of Educational Progress (NAEPP); Trends in International Mathematics and Science Study (TIMSS); the use of instructional technology and calculators; and task group reports. Individuals interested in attending the meeting are advised to register in advance to ensure space availability. Please contact Jennifer Graban at (202) 260–1491 or be e-mail at *Jennifer.Graban@ed.gov* by Wednesday, November 1, 2006.

The November 6 meeting will also contain an *Open Public Session* from 10:45–11:45 a.m. At that time, the public is invited to comment and present evidence in connection to elements outlined in the Executive Order. Presenters are encouraged to address one or more of the Panel's present four focus areas: conceptual knowledge and skills; learning processes; instructional practices; and teachers. (Please refer to the Web site at *http://www.ed.gov/about/bdscomm/list/mathpanel/index.html* for more information on the elements of the Executive Order.)

If you are interested in giving testimony during the public session on November 6, please contact Jennifer Graban at (202) 260–1491 or *Jennifer.Graban@ed.gov* by November 1, 2006, to reserve time on the agenda. Please include your name, the organization you represent, and, if appropriate, a brief description of the issue you would like to present and the focus area(s) to which it correlates. Presenters will be allowed five minutes to make their comments. Presenters are requested to submit three written copies and an electronic file (CD or diskette) of their comments at the meeting, which should be labeled with their name and

contact information. Individuals interested in solely attending the meeting are advised to register in advance to ensure space availability.

Given the expected number of individuals interested in providing comments at the meeting, reservations for presenting comments should be made as soon as possible. Reservations will be processed on a first-come, first-served basis. Persons who are unable to obtain reservations to speak during the meeting are encouraged to submit written comments, which will be considered equally as those presented on site. Written comments will be accepted at the meeting site or via e-mail at *Jennifer.Graban@ed.gov*. If you will be e-mailing written comments, please do so by October 27, 2006.

The Panel will submit to the President, through the Secretary, a preliminary report not later than January 31, 2007, and a final report not later than February 28, 2008. Both reports shall, at a minimum, contain recommendations, based on the best available scientific evidence.

The meeting site is accessible to individuals with disabilities. Individuals who will need accommodations in order to attend the meeting such as interpreting services, assistive listening devices, or materials in alternative format should notify Jennifer Graban at (202) 260–1491 or *Jennifer.Graban@ed.gov* no later than November 1, 2006. We will attempt to meet requests for accommodations after this date, but cannot guarantee their availability.

Records are kept of all Panel proceedings, and are available for public inspection at the staff office for the Panel, from the hours of 9 a.m. to 5 p.m.

Dated: October 11, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–8713 Filed 10–16–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Management, Notice of Membership

AGENCY: Department of Education.

ACTION: Notice of Membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ends September 30, 2006. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education for 2006 is composed of career senior executives, noncareer senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education for the specified SES performance cycle: Chair: Michell Clark, David Black, Kathleen Leos, Cheryl Oldham, Kent Talbert, Margo Anderson, Dennis Berry, Sue Betka, Carol Cichowski, Harry Feely, Patricia Guard, Danny Harris, Gary Hopkins, Jeannette Lim, Philip Link, Andrew Pepin, Thomas Skelly, Ricky Takai, and Veronica Trietsch. Alternates include: Susan Craig, Robert Eitel, and John McGrath.

FOR FURTHER INFORMATION CONTACT: Debra Gibson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Room 2E124, FOB–6, Washington, DC 20202–4573. Telephone: (202) 401–2548.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: October 12, 2006.

Margaret Spellings,

Secretary of Education.

[FR Doc. E6–17238 Filed 10–16–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency information collection activities: Submission for OMB Review; comment request.

SUMMARY: The EIA has submitted the Petroleum Marketing Program package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*)

DATES: Comments must be filed by November 16, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Sarah Garman, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by FAX at 202–395–7285 or e-mail to *Sarah_P._Garman@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by FAX (202–

287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component; (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–14, 182, 782A/B/C, 821, 856, 863, 877, 878, and 888, ''Petroleum Marketing Program''.
2. Energy Information Administration.
3. OMB Number 1905–0174.
4. Three-year extension.
5. Mandatory.
6. EIA's Petroleum Marketing Program collects basic data necessary to meet EIA's legislative mandates as well as the needs of EIA's public and private customers. Data collected include costs, sales, prices, and distribution of crude oil and petroleum products. The data are used for analyses, publications, and multi-fuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.
7. Business or other for-profit.
8. 121,155 hours.

Earlier in 2006 EIA announced in the **Federal Register** its plan to discontinue the collection of Forms EIA–182 and EIA–856 due to budget constraints. As subsequently announced in August, EIA will continue collecting the forms temporarily. After EIA's budget for Fiscal Year 2007 is finalized, EIA will make a decision regarding further continuation of those two surveys based on funding availability and EIA priorities.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, October 12, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Agency Clearance OfficerEnergy Information Administration.

[FR Doc. E6–17182 Filed 10–16–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Energy Information Administration (EIA), Department of Energy (DOE).

ACTION: Agency Information Collection Activities: Submission for OMB Review; Comment Request.

SUMMARY: The EIA has submitted the Petroleum Supply Reporting System package to the Office of Management and Budget (OMB) for review and a three-year extension under section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 et seq).

DATES: Comments must be filed by November 16, 2006. If you anticipate that you will be submitting comments but find it difficult to do so within that period, you should contact the OMB Desk Officer for DOE listed below as soon as possible.

ADDRESSES: Send comments to Sarah Garman, OMB Desk Officer for DOE, Office of Information and Regulatory Affairs, Office of Management and Budget. To ensure receipt of the comments by the due date, submission by fax at 202–395–7285 or e-mail to *Sarah_P._Garman@omb.eop.gov* is recommended. The mailing address is 726 Jackson Place, NW., Washington, DC 20503. The OMB DOE Desk Officer may be telephoned at (202) 395–4650. (A copy of your comments should also be provided to EIA's Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland. To ensure receipt of the comments by the due date, submission by fax (202–287–1705) or e-mail (*grace.sutherland@eia.doe.gov*) is also recommended. The mailing address is Statistics and Methods Group (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Ms. Sutherland may be contacted by telephone at (202) 287–1712.

SUPPLEMENTARY INFORMATION: This section contains the following information about the energy information collection submitted to OMB for review: (1) The collection numbers and title; (2) the sponsor (i.e., the Department of Energy component); (3) the current OMB docket number (if applicable); (4) the type of request (i.e., new, revision, extension, or reinstatement); (5) response obligation (i.e., mandatory, voluntary, or required to obtain or retain benefits); (6) a description of the need for and proposed use of the information; (7) a categorical description of the likely respondents; and (8) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

1. Forms EIA–800, 801, 802, 803, 804, 805, 810, 811, 812, 813, 814, 815, 816, 817, 819, 820 ''Petroleum Supply Reporting System''.
2. Energy Information Administration.
3. OMB Number 1905–0165.
4. Three-year extension.
5. Mandatory.
6. EIA's Petroleum Supply Reporting System collects information needed for determining the supply and disposition of crude oil, petroleum products, and natural gas liquids. The data are published by EIA and are used by public and private analysts. Respondents are operators of petroleum refineries, blending plants, bulk terminals, crude oil and product pipelines, natural gas plant facilities, tankers, barges, and oil importers.
7. Business or other for-profit.
8. 73,693 hours.

Please refer to the supporting statement as well as the proposed forms and instructions for more information about the purpose, who must report, when to report, where to submit, the elements to be reported, detailed instructions, provisions for confidentiality, and uses (including possible nonstatistical uses) of the information. For instructions on obtaining materials, see the **FOR FURTHER INFORMATION CONTACT** section.

Statutory Authority: Section 3507(h)(1) of the Paperwork Reduction Act of 1995 (Pub.

L. 104–13) (44 U.S.C. 3501 *et seq.*, at 3507(h)(1)).

Issued in Washington, DC, October 12, 2006.

Jay H. Casselberry,

Agency Clearance Officer, Energy Information Administration.

[FR Doc. E6–17183 Filed 10–16–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–13–000]

Algonquin Gas Transmission, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 6, 2006, Algonquin Gas Transmission, LLC (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective November 6, 2006.

Algonquin states that the purpose of this filing is to modify the General Terms and Conditions of the Algonquin Tariff to reflect the current procedures that releasing customers and potential prearranged and replacement customers are required to follow in order to effectuate the temporary or permanent release of capacity via Algonquin's capacity release mechanism.

Algonquin states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17214 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER04–928–003]

California Independent System; Operator Corporation; Notice of Filings

October 10, 2006.

Take notice that on August 1, 2005, the Pacific Gas and Electric Company (PG&E) and Southern California Edison Company submitted filings to comply with the Commission's July 1, 2005 Order in Docket No. ER04–928–000, *Public Utilities With Existing Contracts In California Independent System Operator Corporation Region*, 112 FERC ¶ 61,007 (2005).

On November 14, 2005, PG&E submitted a new existing transmission contract template to recognize the encumbrance created by the Midway-Sunset Agreement (Rate Schedule No. 182) on PG&E's facilities and Midway-Sunset's right under the agreement.

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

These filings are accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and are available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 24, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17204 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–71–001]

Carolina Gas Transmission Corporation SCG Pipeline, Inc.; South Carolina Pipeline Corporation; Notice of Compliance Filing

October 11, 2006.

Take notice that on September 29, 2006, SCG Pipeline, Inc. and South Carolina Pipeline Corporation, for themselves and on behalf of Carolina Gas Transmission Corporation (Carolina Gas) (collectively, ''the SC Pipelines'') submitted for filing the Carolina Gas FERC Gas Tariff Original Volume 1 in compliance with the Commission's Order Issuing Certificates, Granting Abandonment Authority, And Approving Offer Of Settlement, Carolina Gas Transmission Corporation, 116 FERC ¶ 61,049 (July 20, 2006). The SC Pipelines request that the Commission approve the tariff effective November 1, 2006.

Any person desiring to protest this filing must file in accordance with Rule

211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 18, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17201 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–36–020]

Dauphin Island Gathering Partners; Notice of Negotiated Rate

October 11, 2006.

Take notice that on October 6, 2006, Dauphin Island Gathering Partners (Dauphin Island) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed below to become effective November 6, 2006: Twenty-Seventh Sheet No. 9; Twenty-Third Revised Sheet No. 10.

Dauphin Island states that copies of the filing are being served contemporaneously on its customers and other interested parties.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17211 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–10–000]

East Tennessee Natural Gas, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 6, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing, to be effective November 6, 2006.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17212 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–413–002]

East Tennessee Natural Gas, LLC; Notice of Compliance Filing

October 11, 2006.

Take notice that on September 28, 2006, East Tennessee Natural Gas, LLC (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheet listed in Appendix A to the filing with an effective date of September 16, 2006, or the date the Jewell Ridge Lateral Project facilities are placed into service.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on October 18, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17222 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–9–000]

Egan Hub Storage, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 6, 2006, Egan Hub Storage, LLC (Egan Hub) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective November 6, 2006.

Egan Hub states that the purpose of this filing is to modify the General Terms and Conditions of the Egan Hub Tariff to reflect the current procedures that releasing customers and potential prearranged and replacement customers are required to follow in order to effectuate the temporary or permanent release of capacity via Egan Hub's capacity release mechanism.

Egan Hub states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17221 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–74–001]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Compliance Filing

October 12, 2006.

Take notice that on September 29, 2006, Maritimes & Northeast Pipeline, L.L.C., (Maritimes) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Eighth Revised Sheet No. 14, with an effective date of November 1, 2006.

Maritimes states that the filing is being made in compliance with the Commission's order issued on July 27, 2005 in the above-captioned proceeding.

Any person desiring to protest this filing must file in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). Protests to this filing will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Such protests must be filed on or before the date as indicated below. Anyone filing a protest must serve a copy of that document on all the parties to the proceeding.

The Commission encourages electronic submission of protests in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a

document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Protest Date: 5 p.m. eastern time on October 17, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17198 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Docket No. RP99–176–119]

Natural Gas Pipeline Company of America; Notice of Negotiated Rates

October 11, 2006.

Take notice that on October 5, 2006, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sub Second Revised Sheet No. 26D.02, to become effective November 1, 2006.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17197 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–14–000]

Natural Gas Pipeline Company of America; Notice of Refund Report

October 11, 2006.

Take notice that on October 6, 2006, Natural Gas Pipeline Company of America (Natural) filed its Refund Report regarding the penalty revenues for the period January 1, 2006 through June 30, 2006, that it refunded to its customers pursuant to Section 12.8 of the General Terms and Conditions (GT&C) of its FERC Gas Tariff, Sixth Revised Volume No. 1.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time October 18, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17215 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–5–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 5, 2006, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets, with an effective date of November 5, 2006: 43 Revised Sheet No. 66; 6 Revised Sheet No. 66B; 6 Revised Sheet No. 66D.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention

or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17217 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–12–000]

Paiute Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 6, 2006, Paiute Pipeline Company (Paiute) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to be effective November 5, 2006: Second Revised Sheet No. 59; Second Revised Sheet No. 60; Fifth Revised Sheet No. 65; Fourth Revised Sheet No. 66; Third Revised Sheet No. 77; Eighth Revised Sheet No. 111; Third Revised Sheet No. 116.

Paiute indicates that the purpose of its filing is to propose several miscellaneous revisions to its tariff, including its right-of-first-refusal provisions, discounting policy provisions, and its gas quality provisions.

Paiute states that copies of this filing are being served upon all of Paiute's customers and interested state regulatory commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17213 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PH06–71–000; PH06–72–000; PH06–73–000; PH06–74–000; PH06–75–000; PH06–76–000; PH06–77–000; PH06–78–000; PH06–79–000; PH06–80–000; PH06–81–000; PH06–82–000; PH06–83–000; PH06–84–000; PH06–85–000; PH06–87–000; PH06–88–000; PH06–89–000; PH06–90–000; PH06–91–000; PH06–92–000; PH06–93–000; PH06–94–000; PH06–95–000; PH06–96–000; PH06–97–000; PH06–98–000; PH06–99–000; PH06–100–000; PH06–101–000; PH06–102–000]

Questar Corporation; Questar Corporation; C&T Enterprises, Inc.; NWO Resources, Inc.; TECO Energy, Inc.; FPL Group, Inc.; Enbridge Gas Distribution, Inc.; Phelps Dodge Corporation; Stanley Works; Sierra Pacific Resources Operating Companies; UnionBanCal Corporation; UnionBanCal Equities, Inc.; Bankers Commercial Corporation; EnergySouth, Inc.; Barrick Gold Corporation; PG&E Corporation; Trans-Elect, Inc.; Merrill Lynch & Company, Inc.; Energy West Resources, Inc.; Horizon Asset Management, Inc.; Ironhill Transmission, LLC; UIL Holdings Corporation; Brookfield Asset Management Inc.; ATC Management Inc.; AES Corporation; Pinnacle West Capital Corporation; ArcLight Capital Holdings, LLC; National Fuel Gas Company; LGB Cap Rock LLC; Empire Distribution Electrical Company; The Laclede Group, Inc.; Sowood Capital Management LP; Notice of Effectiveness of Holding Company and Transaction Exemptions and Waivers

October 11, 2006.

Take notice that in August and September 2006 the holding company and transaction exemptions and waivers requested in the above-captioned proceedings are deemed to have been granted by operation of law pursuant to 18 CFR 366.4.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17210 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–6–000]

Rendezvous Pipeline Company, L.L.C.; Notice of Tariff Filing

October 11, 2006.

Take notice that on October 3, 2006 Rendezvous Pipeline Company, L.L.C. (Rendezvous) tendered for filing its FERC Gas Tariff, Original Volume No. 1.

Rendezvous states that the purpose of this filing is to comply with the Commission's orders issued on July 27, 2005, in Docket No. CP05–40–000 and CP05–41–000, and on November 17, 2005, in Docket No. CP05–40–001 and CP05–41–001. Rendezvous Gas Services, L.L.C., 112 FERC ¶ 61,141, reh'g denied, 113 FERC ¶ 61,169 (2005). Rendezvous has proposed a tariff effective date of November 2, 2006.

Rendezvous states that copies of the filing were served on all parties listed on the official service lists in Docket Nos. CP05–40 and CP05–41, and on the Wyoming Public Service Commission.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17218 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG06–51–000; EG06–63–000; EG06–64–000; EG06–65–000; EG06–66–000; FC06–14–000]

SAF Hydroelectric LLC; COSI ACE, LLC; Mesquite Wind, LLC; FPL Energy Mower County, LLC; Scurry County Wind L.P.; J-Power USA Investment Co., Ltd. ; Notice of Effectiveness of Exempt Wholesale Generator or Foreign Utility Company Status

October 11, 2006.

Take notice that during the month of September 2006, the status of the above-captioned entities as Exempt Wholesale Generators or Foreign Utility Companies became effective by operation of the Commission's regulations. 18 CFR 366.7(a).

Magalie R. Salas,

Secretary.

[FR Doc. E6–17203 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–470–000; Docket Nos. CP06–471–000; CP06–472–000; CP06–473–000; Docket No. CP06–474–000]

Southern LNG, Inc.; Elba Express Company, L.L.C.; Southern Natural Gas Company; Notice of Applications

October 10, 2006.

Take notice that on September 29, 2006, Southern LNG, Inc. (SLNG), Elba Express Company, L.L.C. (EEC), and Southern Natural Gas Company (SNG), Post Office Box 2563, Birmingham, Alabama 35202–2563, concurrently filed related applications under sections 3 and 7 of the Natural Gas Act (NGA) and Parts 153,157, 284 and 380 of the Commission's regulations for authorizations necessary to expand SLNG's liquefied natural gas (LNG) import terminal in Georgia and to construct, operate and acquire facilities to move re-vaporized LNG to downstream markets in the United States. The projects are collectively known as the Elba III Project, all as more fully set forth in the application which is on file with the Commission and open for public inspection. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

SLNG seeks authorization under section 3 of the NGA to expand its existing LNG import terminal on Elba Island in Chatham County, Georgia in two phases by: (i) Constructing two new LNG storage tanks, each having a storage capacity equivalent to 4.22 Bcf, (ii) constructing additional facilities to provide 900 MMcf per day of vaporization capacity at the end of phase two, and (iii) modifying marine facilities to accommodate larger LNG tankers and speed simultaneous unloading of two LNG tankers. SLNG proposes to provide service from the expansion under proposed Rate Schedule LNG–3 and also seeks authority to provide service under negotiated rates. Finally, SLNG seeks authority under section 7(b) of the NGA to abandon an unutilized dock.

EEC requests authority under section 7(c) of the NGA to: (i) Acquire an undivided interest in SNG's Twin 30s pipelines which extend from SLNG's Elba Island terminal to SNG's pipeline system in Port Wentworth, Georgia; (ii) construct and operate a new 42-inch and 36-inch diameter, approximately 189 mile interstate pipeline extending from Port Wentworth through Effingham, Screven, Jenkins, Burke, Jefferson, Glascock, Warren, McDuffie, Wilkes, and Elbert Counties, Georgia to interconnections with Transcontinental Gas Pipe Line Corporation (Transco) in Hart County, Georgia and Anderson County, South Carolina; and to construct and operate a 10,000 horsepower compressor station on the new line in Jenkins County. Upon installation of the compression the pipeline will be able to provide up to 1,175 MMcf per day of transportation to the Transco interconnections. EEC also requests blanket construction and

transportation certificates pursuant to Parts 157 and 284 of the Commission's regulations, respectively, and approval of its pro forma transportation tariff.

SNG seeks authority to transfer pursuant to section 7(b) of the NGA an undivided interest in its Twin 30s pipelines to EEC and seeks authority under section 7(c) to acquire an undivided interest in a portion of the pipeline proposed by EEC.

Any questions regarding this application should be directed to James D. Johnston, Senior Counsel, Southern Natural Gas Company, 1900 Fifth Avenue North, Birmingham, Alabama 35203, telephone: 205–326–2019, e-mail: *james.johnston@elpaso.com.*

On February 1, 2006, the Commission granted SNG's request to utilize the National Environmental Policy Act (NEPA) Pre-Filing Process and assigned Docket No. PF06–14–000 to staff activities involving the Elba III Project. Now, as of the filing of these applications on September 29, 2006, the NEPA Pre-Filing Process for this project has ended. From this time forward, the Elba III Project proceeding will be conducted in the docket numbers listed above in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: October 31, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17200 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–8–000]

Texas Eastern Transmission, LP; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 6, 2006, Texas Eastern Transmission, LP (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective November 6, 2006.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17220 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP07–1–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application for Abandonment

October 11, 2006.

Take notice that on October 5, 2006, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing an application under section 7 of the Natural Gas Act to abandon a

portion of the firm transportation service provided to the City of Bessemer City, North Carolina (Bessemer City) under Transco's Rate Schedule FT.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time October 25, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17202 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–7–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 5, 2006, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective October 1, 2006.

Transco states that the purpose of the instant filing is to track rate changes resulting from a reduction in the Annual Charge Adjustment (ACA) rate from $0.0018 to $0.0016 attributable to: (1) Storage service purchased from National Fuel Gas Supply Corporation (National Fuel) under its Rate Schedule SS–1, the costs of which are included in the rates and charges payable under Transco's Rate Schedules LSS and SS–2, (2) storage service purchased from Dominion Transmission, Inc. (Dominion) under its Rate Schedule GSS, the costs of which are included in the rates and charges payable under Transco's Rate Schedules GSS and LSS, (3) transportation service purchased from National Fuel under its Rate Schedule X–54, the costs of which are included in the rates and charges payable under Transco's Rate Schedule SS–2, and (4) storage service purchased from Texas Eastern Transmission, LP (Texas Eastern) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2.

Transco states that this filing is being made pursuant to tracking provisions under section 4 of Transco's Rate Schedule LSS, section 4 of Transco's Rate Schedule SS–2, section 3 of Transco's Rate Schedule GSS and section 26 of the General Terms and Conditions of Transco's Third Revised Volume No. 1 Tariff.

Included in Appendices B through E are the explanations of the rate changes and details regarding the computation of the revised GSS, LSS, SS–2, and S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17219 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP07–4–000]

Transwestern Pipeline Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

October 11, 2006.

Take notice that on October 5, 2006, Transwestern Pipeline Company, LLC (Transwestern) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 15 to become effective September 1, 2006.

Transwestern states that the purpose of this filing is to add a contract to the list of non-conforming agreements.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17216 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

October 10, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER96–780–015; ER01–1633–004; ER00–3240–007; ER03–1383–007.

Applicants: Southern Company Services, Inc.; Southern Company-Florida LLC; Oleander Power Project, L.P.; DeSoto County Generating Company, LLC.

Description: Southern Company Services, Inc. on behalf of Alabama Power Co. et al. submits a notice of non-material change in status regarding the characteristics that FERC previously authorized to transact market-base rates.

Filed Date: 10/02/2006.

Accession Number: 20061006–0026.

Comment Date: 5 p.m. Eastern Time on Monday, October 23, 2006.

Docket Numbers: ER02–783–005; ER02–852–005; ER02–855–005; ER01–2262–007.

Applicants: EPCOR Merchant and Capital (US) Inc.; EPCOR Power Development, Inc.; EPDC, Inc.; Frederick Power L.P.

Description: EPCOR Merchant and Capital (US) Inc. et al. submits an amendment to its 8/14/06 filing of a Notice of Change in Status re Market-Based Rate Authority.

Filed Date: 10/03/2006.

Accession Number: 20061005–0216.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 24, 2006.

Docket Numbers: ER03–891–002.

Applicants: Gulf States Energy Investments L.P.

Description: Gulf States Energy Investments, LP submits an amended triennial updated market power analysis in compliances with FERC's Order 652.

Filed Date: 10/06/2006.

Accession Number: 20061010–0030.

Comment Date: 5 p.m. Eastern Time on Friday, October 27, 2006.

Docket Numbers: ER03–1288–002.

Applicants: Rocky Mountain Energy Center, LLC.

Description: Rocky Mountain Energy Center, LLC submits an triennial updated market analysis in accordance with the Commission's 10/3/03 letter order.

Filed Date: 10/03/2006.

Accession Number: 20061005–0044.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 24, 2006.

Docket Numbers: ER05–1508–003.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits an amendment to its 9/8/06 filing of the Large Generator Interconnection Agreement with Power Partners Midwest, LLC and Interstate Power & Company.

Filed Date: 10/04/2006.

Accession Number: 20061006–0005.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06–1001–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits its Substitute Third Revised Sheet 969 et al. to FERC Electric Tariff, Third Revised Volume No. 1.

Filed Date: 10/04/2006.

Accession Number: 20061005–0188.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06–1331–000.

Applicants: CalPeak Power LLC.

Description: CalPeak Power LLC supplements its 8/2/06 application for acceptance of their initial market-based rate tariff etc, to clarify a statement in the application.

Filed Date: 10/04/2006.

Accession Number: 20061006–0001.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06–1306–000.

Applicants: Sunbury Generation, LP.

Description: Sunbury Generation LP submits a notice of amendment to its 8/24/06 filing, notice of succession.

Filed Date: 10/04/2006.

Accession Number: 20061005–0218.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER06–1422–001.

Applicants: Louisville Gas & Electric Company; Kentucky Utilities Company

Description: Louisville Gas and Electric Co and Kentucky Utilities Co submit requests that the Commission find that they continue to be authorized to make sales of ARS energy to BREC not-withstanding recent changes to market based rate tariff.

Filed Date: 10/04/2006.

Accession Number: 20061006–0004.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07–12–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Company submits its revised rate sheets to the Interconnection Facilities Agreement with NM Mid-Valley Genco, LLC.

Filed Date: 10/04/2006.

Accession Number: 20061006–0006.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07–13–000.

Applicants: Dynegy Midwest Generation, Inc.

Description: Dynegy Midwest Generation, Inc submits revisions to its market-based rate tariff that would

remove the outdated restriction on sales to Illinois Power Co.

Filed Date: 10/04/2006.

Accession Number: 20061006–0009.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Docket Numbers: ER07–14–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits notices of cancellation for Network Operating Agreements.

Filed Date: 10/04/2006.

Accession Number: 20061006–0008.

Comment Date: 5 p.m. Eastern Time on Wednesday, October 25, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and § 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17173 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–428–000]

Panhandle Eastern Pipeline Company, LP; Notice of Intent To Prepare an Environmental Assessment for the Proposed Tuscola East Project and Request for Comments on Environmental Issues and Notice of Scoping Meeting

October 11, 2006.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Panhandle Eastern Pipeline Company, LP's (Panhandle) planned Tuscola East Project located in Douglas County, Illinois and Parke, Marion, Boone, and Hamilton Counties, Indiana.[1] This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on November 13, 2006.

Comments may be submitted in written form or presented verbally at the public meeting detailed below. Further details on how to submit written comments are provided in the public participation section of this notice. In lieu of sending written comments, you are invited to attend the public scoping meeting that is scheduled as follows:

Tuscola East Project

Tuesday—October 24, 2006, 7 p.m. (EST), VFW in Noblesville, 654 S 9th Street, Noblesville IN 46060. (317) 770–3954.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Panhandle provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project

Due to the age of Panhandle's existing line and the Department of Transportation's Integrity Management Plan regulations, Panhandle reduced the operating pressure on one line by 20 percent in 2004. Additional measures to mitigate risk for High Consequence Areas must be implemented by end of 2011. Panhandle's project purpose is to restore long-haul transportation capacity from Tuscola heading east to Michigan by replacing the existing diameter pipeline with larger diameter pipeline. In general, these facilities would consist of replacing about 31.3 miles of pipeline consisting of three segments and abandoning in place or by removal the existing 29.4 miles of pipelines that correspond with the new replacement lines. Specifically, the project includes:

- *Tuscola 100-Line (Douglas County, IL)*—Replacing 6.7 miles of existing 100-Line 20-inch diameter pipeline with 36-inch diameter pipeline, designating the new pipeline as the 500-Line, and installing a new pig launcher/receiver;
- *Tuscola 200-Line (Douglas County, IL)*—Replacing 1.9 miles of the existing 200-Line 36-inch diameter pipeline with 20-inch diameter pipeline (the 1.9 miles of 36-inch pipeline replaced would be used for the new 500-Line);
- *Montezuma 100-Line (Parke County, IN)*—Replacing 6.6 miles of the existing 100-Line 20-inch diameter pipeline with 36-inch diameter pipeline, designating the new pipeline as the 500-Line, and installing a new pig launcher/receiver; and
- *Zionsville 200-Line (Marion, Boone, and Hamilton Counties, IN)*—Replacing 18.0 miles of the existing 200-Line 24-inch diameter pipeline with 30-inch diameter pipeline, designating the new

[1] Panhandle's application was filed with the Commission under section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

pipeline as the 500-Line, and installing a new pig launcher/receiver.

The majority of all segments to be replaced would be abandoned by removal, and at stream, wetland, pipeline crossovers, and uncased road crossing the pipeline would be abandoned in place. Also 16 taps would be disconnected from the 100 and 200-Lines and reconnection to the nearest adjacent lines would be required in order to continue providing service. The general locations of the project facilities are shown in Appendix 1.[2]

Land Requirements for Construction

Panhandle proposes to use a 125-foot wide right-of-way, which would overlap its existing permanent right-of-way. However, a temporary construction right-of-way may be required. Panhandle would first install the new 500-Line along each segment, and then remove the 100- and 200-Lines from their respective rights-of-way. The new 500-Line would be installed within the existing rights-of-way of each segment with a 25-foot offset from the existing mainlines. Construction of the proposed facilities would require about 546.6 acres of land. Following construction, about 204.8 acres would be maintained as permanent easement or aboveground facility sites as part of Panhandle's existing permanent rights-of-way. No additional permanent rights-of-way would be required because the proposed project would be operated within existing Panhandle rights-of-way. The remaining 341.8 acres of land would be restored and allowed to revert to its former use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA, we[3] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Endangered and threatened species.
- Hazardous waste.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Panhandle. This preliminary list of issues may be changed based on your comments and our analysis.

Project-related impact on:

- Threatened and Endangered Species;
- Noise impacts from construction activities and operations
- Pipeline Safety and reliability; and
- Residences or structures within 50 feet of the construction work space.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations and/or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP06–428–000.
- Mail your comments so that they will be received in Washington, DC on or before November 13, 2006.

Please note that the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created on-line.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (Appendix 2). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding, or ''intervenor''. To become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). Intervenors have the right to seek rehearing of the Commission's decision. Motions to Intervene should be electronically submitted using the commission's eFiling system at *http://www.ferc.gov.* Persons without Internet access should send an original and 14 copies of their motion to the Secretary of the Commission at the address indicated previously. Persons filing Motions to Intervene on or before the comment

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

deadline indicated above must send a copy of the motion to the Applicant. All filings, including late interventions, submitted after the comment deadline must be served on the Applicant and all other intervenors identified on the Commission's service list for this proceeding. Persons on the service list with email addresses may be served electronically; others must be served a hard copy of the filing.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17199 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

October 11, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12727–000.

c. *Date filed:* August 17, 2006.

d. *Applicant:* Lincoln County, Oregon.

e. *Name of Project:* Lincoln County Wave Energy Project.

f. *Location:* The project would be located in the Pacific Ocean in Lincoln County, Oregon.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Mr. Wayne Belmont, Lincoln County, Oregon, 225 W, Olive Street, Room 110, Newport, OR 97365, phone: (541)–265–4108.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of project:* Oregon's offshore conditions present the most optimal wave environment for extracting potential useful energy according to the Electrical Power Research Institute (EPRI). The wave energy project would be bounded on the north and south by a 3-mile-long line, on the east by the shoreline defined by the border of Lincoln County, and on the west by a parallel line 3 miles offshore. Within this area Lincoln County together with the Central Lincoln People's Utility District (CLPUD), has identified at least nine potential interconnections between the existing CLPUD near shore substations on the power distribution grid and possible ''wave energy park'' locations off the coast of Lincoln County. A Bonneville Power Administration (BPA) substation in Toledo, Oregon can distribute power beyond the county on the electrical grid. Lincoln County's project will comply with all interconnection requirements as specified by CLPUD and BPA. In addition, there are potentially other connections including utilizing an existing outfall for a major power user and possible interconnections with Pacific Power in the northern portion of Lincoln County.

Such wave parks have the potential of generating up to 20 megawatts (MW) of power or more. Multiple sites would be beneficial to the immediate area and to the Pacific Northwest in supplementing the region's hydropower capacity and in providing generation to the west of the Cascade Mountain Range, thereby easing congestion on the east-west transmission grid in region. While recognizing that wave energy will be an intermittent energy source, and mindful of integration needs, waves are far less intermittent than wind energy and are predictable many hours ahead of their occurrence.

Lincoln County will examine all the available wave power technologies for each location within the project boundary. Lincoln County will work closely with Oregon State University as a leader in wave power development. All the alternative Wave Energy Conversion (WEC) devices capable of generating commercially viable energy will be explored.

Lincoln County will seek investment of available economic development dollars to locate businesses to both support wave parks off our county shores and to create and test new technologies. The Port of Newport has two deep-draft terminals for support vessels servicing the wave power parks. Adequate industrial lands adjacent to those terminals, with full infrastructure improvements including water, sewer, and highways, are available to develop local wave park technology, manufacturing, maintenance and repair businesses. Oregon State University, which has launched an initiative to create the U.S. Ocean Wave Energy Research, Development and Demonstration Center, maintains the Hatfield Marine Science Center on Yaquina Bay in Newport, which could become a primary center for creating

and field testing new wave power technologies.

The project is estimated to have an annual generation of 87.5 to 790 gigawatt-hours.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Competing Preliminary Permit:* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

o. *Competing Development Application:* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

p. *Notice of Intent:* A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

q. *Proposed Scope of Studies under Permit:* A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

r. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under ''e-filing'' link. The Commission strongly encourages electronic filing.

s. *Filing and Service of Responsive Documents:* Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'',''COMPETING APPLICATION'' OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

t. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17205 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 10, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2183–039.

c. *Date filed:* September 5, 2006.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Hydroelectric Project.

f. *Location:* The project is located on the River Grand (Neosho) in Mayes County, Oklahoma. The project does not occupy any Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Robert W. Sullivan, Assistant General Manager, Risk Management & Regulatory Compliance, GRDA, P.O. Box 409, Vinita, Oklahoma 74301 (918)–256–5545.

i. *FERC Contact:* Jon Cofrancesco at 202–502–8951, or e-mail *Jon.Cofrancesco@ferc.gov.*

j. *Deadline for filing comments and/or motions:* November 13, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–2183–039) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. Description of Application: Grand River Dam Authority requests Commission authorization to grant 2-year automatic, renewal leases to several entities for the continued use of project land along Lake Hudson within the Markham Ferry Project. The subject entities and the associated uses are as follows: (1) Alfred & Zita Jensen d/b/a Jensen's RV Park—recreational vehicle park and public camping area; (2) Charles & Rita Pate d/b/a Lakeside Terrace Mobile Home Park—recreational vehicle park and public camping area; (3) Robert & Cindy Snodgrass & Jacky & Sherry Wilkins d/b/a Spring Cove West Resort—mobile home park; and (4) Jim & Kenny Packard (one-year automatic, renewal lease)—haying purposes.

l. Location of Application: The filing is available for review at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''e-Library'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online support at *FERCOnlineSupport@ferc.gov* or toll free (866) 208–3676 or TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''Comments'', ''Recommendations for Terms and Conditions'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17207 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

October 11, 2006.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of license to upgrade the installed capacity.

b. *Project No.:* 2778–035.

c. *Date Filed:* August 17, 2006.

d. *Applicant:* Idaho Power Company.

e. *Name of Project:* Shoshone Falls.

f. *Location:* The project is located on the Snake River in Jerome and Twin Falls Counties, Idaho. Part of the project occupies lands owned by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Tom R. Saldin, Senior Vice President, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2550. Also, Mr. Nathan F. Gardiner, Idaho Power Co., P.O. Box 70, Boise, Idaho 83707. Tel: (208) 388–2975.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 502–6190 or *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and/or motions:* November 13, 2006.

k. *Description of Filing:* The Idaho Power Company (IPC) proposes to demolish a section of the Shoshone Falls powerhouse built in 1907 and containing two generating units 0.4 MW and 0.6 MW and replace it with a new powerhouse containing a 50 MW generating unit. The project's authorized installed capacity would increase from 11,875 kilowatts (KW) to 60,875 kW, and the hydraulic capacity would increase from 815 cubic feet per second (cfs) to 4,815 cfs. The IPC also requests an extension of the license term for the project from 30 to 50 years.

l. *Locations of Applications:* A copy of the application is available for inspection and reproduction at the Commission in the Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov.* For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17208 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

October 11, 2006.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 349–116.

c. *Date Filed:* September 11, 2006.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Martin Dam Hydroelectric Project.

f. *Location:* The project is located on Lake Martin in Tallapoosa County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r) and sections 799 and 801.

h. *Applicant Contact:* Mr. Keith E. Bryant, Senior Engineer; 600 18th Street North, Birmingham, AL 35203, (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Isis Johnson at (202) 502–6346, or by e-mail: *Isis.Johnson@ferc.gov.*

j. *Deadline for filing comments and or motions:* November 13, 2006.

All documents (original and eight copies) should be filed with: Ms. Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–349–116) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages e-filings.

k. *Description of request:* Alabama Power Company, licensee for the Martin Dam Hydroelectric Project, has requested Commission approval to permit James A. Vann III to install five wooden piers. The north pier would be constructed to contain five boat slips and the south pier would have four boat slips, for a total of nine. The remaining piers would not contain slips. The piers would vary in length from 64 to 100 feet and a floating platform would be constructed at the end of each. The boat slips would be 20 feet long and four feet wide. These facilities are intended for use by the residents of a subdivision tentatively being developed by the applicant on adjoining non-project lands. These facilities would be located on the north side of Blue Creek, approximately eleven stream miles above Martin Dam.

l. *Location of the Application:* This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov,* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''Comments'', ''Recommendations for Terms and Conditions'', ''Protest'', or ''Motion to Intervene'', as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, State, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17209 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–134 California]

California Department of Water Resources; Notice of Intent To Hold a Public Meeting To Discuss the Draft Environmental Impact Statement for the Oroville Facilities

October 11, 2006.

On September 29, 2006, the Commission staff delivered the Oroville Facilities Draft Environmental Impact Statement (draft EIS) to the Environmental Protection Agency and mailed it to resource and land management agencies, interested organizations, and individuals.

The draft EIS was noticed in the **Federal Register** on October 6, 2006 (71 FR 59106) and comments are due November 20, 2006. The draft EIS evaluates the environmental consequences and developmental benefits of issuing a new license for operating and maintaining the Oroville Facilities, located in Butte County, California. The project would occupy 2,000 acres of federal lands, including lands managed by the U.S. Department of Agriculture, Forest Service and the U.S. Bureau of Land Management. Besides evaluating the project as it now operates, the draft EIS evaluates the

project with the Settlement Agreement and with staff-recommended measures.

The public meeting, which will be recorded by an official stenographer, is scheduled as follows.

Date: Wednesday, November 8, 2006.

Time: 6–9 p.m. (PST).

Place: State House Theater, 1489 Myers Street, Oroville, California 95965.

At the meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the DEIS for the Commission's public record.

For further information, please contact Jim Fargo at e-mail address *james.fargo@ferc.gov*, or by telephone at (202) 502–6095.

Magalie R. Salas,

Secretary.

[FR Doc. E6–17206 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

October 12, 2006.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C 552b:.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 19, 2006, 10 a.m.

PLACE: Room 2C, 888 First Street NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

FOR FURTHER INFORMATION CONTACT: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recorded listing item stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

909TH—MEETING

[Regular Meeting, October 19, 2006, 10 a.m.]

Item No.	Docket No.	Company
		Administrative Agenda
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
		Electric
E–1	RM06–16–000	Mandatory Reliability Standards for the Bulk-Power System.
E–2	RM06–10–000	New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities.
E–3	RR06–3–000	North American Electric Reliability Corporation.
E–4	EL07–1–000	California Independent System Operator Corp.
	EL07–2–000	ISO New England, Inc.
	EL07–3–000	PJM Interconnection, LLC.
	EL07–4–000	Midwest Independent Transmission System Operator, Inc.
	EL07–5–000	New York Independent System Operator, Inc.
	EL07–6–000	Southwest Power Pool, Inc.
E–5	ER06–94–001	ISO New England Inc.
	ER06–94–003	
	EL06–77–000	
	EL06–77–002	
E–6	PL06–4–001	Informal Staff Advice on Regulatory Requirements.
E–7	EC06–125–000	National Grid plc.
	EL06–85–000	KeySpan Corporation.
E–8	EC06–127–000	Northwestern Corporation.
		NorthWestern Energy Marketing, LLC.
		The Clark Fork and Blackfoot, LLC.
		Babcock & Brown Infrastructure Limited.
		BBI U.S. Holdings Pty Ltd.
		BBI U.S. Holdings II Corp.
		BBI Glacier Corp.
E–9	ER06–1384–000	Entergy-Koch Trading, LP.
	ER01–2781–004	
E–10	ER06–1464–000	ISO New England Inc.
		New England Power Pool Participants Committee.
E–11	ER06–1443–000	Pennsylvania Power Company.
	ER06–1443–001	FirstEnergy Service Company.
		Metropolitan Edison Company.
		Pennsylvania Electric Company.
		The Cleveland Electric Illuminating Company.
		Ohio Edison Company.
		The Toledo Electric Company.

909TH—MEETING—Continued

[Regular Meeting, October 19, 2006, 10 a.m.]

Item No.	Docket No.	Company
E–12	EC06–126–000	Boston Edison Company.
		Cambridge Electric Light Company.
		Commonwealth Electric Company.
		Canal Electric Company.
E–13	EC06–144–000	Morgan Stanley & Company, Inc.
		EBG Holdings, LLC.
		Boston Generating, LLC.
		Mystic I, LLC.
		Mystic Development, LLC.
		Fore River Development, LLC.
E–14	EC06–147–000	Entegra Power Group LLC.
		Gila River Power, L.P.
		Union Power Partners, L.P.
		Morgan Stanley & Co. Inc.
		Merrill Lynch, Pierce, Fenner & Smith Inc.
E–15	EC06–154–000	Northeast Generation Company.
		Holyoke Water Power Company.
		NU Enterprises, Inc.
		Select Energy, Inc.
		NE Energy, Inc.
		Mt. Tom Generating Company LLC.
		ECP Energy, LLC.
E–16	ER06–1094–010	Alcoa Power Generating Inc. (Long Sault Division).
E–17	ER03–647–008	New York Independent System Operator, Inc.
E–18	ER06–729–001	Southwest Power Pool, Inc.
E–19	OMITTED.	
E–20	EL06–75–000	Alcoa Inc.
E–21	EL06–89–000	Californians for Renewable Energy, Inc. v. California Independent System Operator Corporation.
E–22	TS06–11–000	Wabash Valley Power Association.
E–23	TS06–13–000	American Transmission Company LLC.
E–24	EL05–15–001	Arkansas Electric Cooperative Corporation v. Entergy Arkansas, Inc.
E–25	ER04–928–002	Public Utilities with Existing Contracts in the California Independent System Operator Corporation Region.
	ER02–1656–028	California Independent System Operator Corporation.
E–26	ER06–451–005	Southwest Power Pool, Inc.
	ER06–1047–001	
	ER06–451–006	
	ER05–1047–002	
E–27	RM04–12–002	Accounting and Financial Reporting for Public Utilities including RTOs.
E–28	ER02–2189–002	Southern California Edison Company.
	ER02–2189–003	
Miscellaneous		
M–1	RM06–11–000	Financial Accounting, Reporting and Records Retention Requirements Under the Public Utility Holding Company Act of 2005.
M–2	RM06–25–000	Electronic Filing of FERC Form No. 60.
M–3	RM96–1–027	Standards for Business Practices of Interstate Natural Gas Pipelines.
	RM05–5–001	Standards for Business Practices and Communication Protocols for Public Utilities.
Gas		
G–1	RP04–274–000	Kern River Gas Transmission Company.
G–2	OMITTED.	
Hydro		
H–1	OMITTED.	
H–2	P–382–034	Southern California Edison Company.
H–3	P–20–072	PacifiCorp.
H–4	P–2030–048	Portland General Electric Company and Confederated Tribes of the Warm Springs Reservation of Oregon.
H–5	P–12462–009	Indian River Power Supply, LLC.
H–6	P–5018–011	Wellesley Rosewood Maynard Mills, L.P.
Certificates		
C–1	RM06–7–000	Revisions to the Blanket Certificate Regulations and Clarification Regarding Rates.

909TH—MEETING—Continued

[Regular Meeting, October 19, 2006, 10 a.m.]

Item No.	Docket No.	Company
C–2	RM06–1–000	Regulations Implementing the Energy Policy Act of 2005; Coordinating the Processing of Federal Authorizations for Applications under Sections 3 and 7 of the Natural Gas Act and Maintaining a Complete Consolidated Record.

Magalie R. Salas,

Secretary.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

A free webcast of this event is available through *http://www.ferc.gov.* Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at 703–993–3100.

[FR Doc. E6–17322 Filed 10–16–06; 8:45 am]

BILLING CODE 6717–01–P

EXPORT-IMPORT BANK OF THE UNITED STATES

Economic Impact Policy

This notice is to inform the public that the Export-Import Bank of the United States has received an application to finance the export of approximately $430 million in U.S. equipment and services to a petroleum refinery and petrochemicals facility in India. The U.S. exports will enable the facility to produce approximately 3 million metric tons of petroleum coke (petcoke), 600 thousand metric tons of sulfur and 900 thousand metric tons of polypropylene. Initial production at this facility is expected to commence in 2008.

Available information indicates that the petcoke and sulfur will be consumed primarily in India; however during the initial years of production, limited amounts of petcoke may be sold to buyers in Asian markets. The polypropylene will be consumed in Asia, Europe and the Middle East. Interested parties may submit comments on this transaction by e-mail to *economic.impact@exim.gov* or by mail to 811 Vermont Avenue, NW., Room 1238, Washington, DC 20571, within 14 days of the date this notice appears in the **Federal Register**.

Helene S. Walsh,

Director, Policy Oversight and Review.

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FEDERAL HOUSING FINANCE BOARD

[No. 2006–N–08]

Privacy Act of 1974; System of Records

AGENCY: Federal Housing Finance Board.

ACTION: Notice with request for comments.

SUMMARY: As part of a comprehensive review of agency practices related to the collection, use, and protection of personally identifiable information, the Federal Housing Finance Board (Finance Board) is updating both its system of records and implementing rule under the Privacy Act of 1974 (Privacy Act). This notice concerns updates to the Finance Board's Privacy Act system of records. Elsewhere in this issue of the **Federal Register**, the Finance Board is publishing an interim final rule with request for comments that revises the agency's Privacy Act regulation to include new sections concerning security of systems of records, use and collection of social security numbers, and employee responsibilities under the Privacy Act.

DATES: This amendment will become effective as proposed without further notice on November 16, 2006 unless comments dictate otherwise. The Finance Board will accept comments in writing on or before November 16, 2006.

Comments: Submit comments to the Finance Board only once, using any one of the following methods:

E-mail: *comments@fhfb.gov.*

Fax: 202–408–2580.

Mail/Hand Delivery: Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, ATTENTION: Public Comments.

Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to the Finance Board at *comments@fhfb.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Board. Notice: Privacy Act of 1974; System of Records. Docket Number 2006–N–08.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the Finance Board Web site at *http://www.fhfb.gov/Default.aspx?Page=93&Top=93.*

FOR FURTHER INFORMATION CONTACT: Janice A. Kaye, Privacy Act Official and Senior Attorney-Advisor, Office of General Counsel, *kayej@fhfb.gov* or 202–408–2505, or David A. Lee, Chief Privacy Officer and Deputy Director, Office of Management, *leed@fhfb.gov* or 202–408–2514. You can send regular mail to the Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In light of the recent theft of sensitive personal information from the various federal agencies and in response to the Office of Management and Budget's memorandum (M–06–15 (May 22, 2006)) directing agencies to review privacy policies and processes, the Finance Board has undertaken a comprehensive review of agency practices related to the collection, use, and protection of personally identifiable information. As a result of that review, the Finance Board has enhanced the safeguards for sensitive information by adding two-factor authentication and data encryption to the agency's network infrastructure and is beginning to implement government-wide personal identity verification management standards that will result in issuance of

new ID cards for all employees and contractors that may include full name, date of birth, image (photograph), fingerprints, organization affiliation (e.g., employee or contractor), organization/office of assignment, grade, e-mail address, United States citizenship status, and results of background investigation. The Finance Board also is updating both its Privacy Act system of records and Privacy Act implementing rule.

Pursuant to the requirements of the Privacy Act, the Finance Board is publishing a notice of the amendments to its system of records. See 5 U.S.C. 552a(e)(4) and (11). In July 2005, the Finance Board offices relocated and we are updating the office address in the system of records. We also are updating, as appropriate, certain document retention periods.

With respect to records related to appointed Federal Home Loan Bank directors (system number FHFB–4), responsibility has shifted from the Office of the Chairman to the Office of Supervision.

With respect to records of the Office of Inspector General (OIG), we are adding audit files to the system of records that already covers investigative files (system number FHFB–6). At the request of the OIG, we also are updating the OIG system of records to add several routine uses.

The Finance Board is adding two new systems of records. The first is titled ''FHFB–7 Federal Home Loan Bank Examination Work Papers.'' It covers documents a Finance Board examiner uses to determine whether a Federal Home Loan Bank's Affordable Housing Program (AHP) complies with applicable laws and regulations. These records may include the names, address, and income information of members of households who participate in a Bank's AHP. These records may be retained as part of the examiner's work papers to document exam conclusions and findings.

The second new system of records is titled ''FHFB–8 Personal Identity Verification (PIV) Management System.'' In August 2004, the President issued Homeland Security Presidential Directive 12 (HSPD–12), which requires development and use of a common identification standard for federal employees and contractors. The Finance Board intends to begin implementing the HSPD–12 PIV requirements this month. In compliance with HSPD–12, the Finance Board PIV cards may include full name, date of birth, image (photograph), fingerprints, organization affiliation (e.g., employee or contractor), organization/office of assignment, grade, e-mail address, United States citizenship status, results of background investigation, and information necessary to the request for a card, registration, verification, and issuance procedures, the index/database of active and invalid cards, and the information stored on the cards. The Finance Board may retain these records as part of the HSPD–12 credentialing process.

For the reasons stated above, the Finance Board hereby amends its system of records originally published in the **Federal Register** in 1995, see 60 FR 46120 (September 5, 1995), as amended in 1997, see 62 FR 66865 (December 22, 1997), 1998, see 62 FR 66865 (December 22, 1997), and 2003, see 68 FR 39947 (July 3, 2003), as follows:

1. Amend the system of records entitled FHFB–1 Employee Attendance Records as follows:

FHFB–1

SYSTEM NAME:

Employee Attendance Records.

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SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

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SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

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2. Amend the system of records entitled FHFB–2 General Travel and Transportation Files as follows:

FHFB–2

SYSTEM NAME:

General Travel and Transportation Files.

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SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

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POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

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RETENTION AND DISPOSAL:

Records are retained for 6 years and 3 months after final payment and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

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3. Amend the system of records entitled FHFB–3 Administrative Grievance Files as follows:

FHFB–3

SYSTEM NAME:

Administrative Grievance Files.

* * * * *

SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

* * * * *

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

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Records are destroyed 2 years after closure of a case.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

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4. Amend the system of records entitled FHFB–4 Federal Home Loan Bank Appointive Director Eligibility Certification Forms as follows:

FHFB–4

SYSTEM NAME:

Federal Home Loan Bank Appointive Director Certification Forms.

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SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

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SYSTEM MANAGER(S) AND ADDRESS:

Office of Supervision, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

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5. Amend the system of records entitled FHFB–5 Agency Personnel Investigative Records as follows:

FHFB–5

SYSTEM NAME:

Personnel Investigative Records.

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SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Finance Board employees and current and former contractor personnel.

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SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

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6. Amend the system of records entitled FHFB–6 Office of Inspector General Investigative Records to read as follows:

FHFB–6

SYSTEM NAME:

Office of Inspector General Audit and Investigative Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. Current and former Finance Board employees, others involved in or associated with Finance Board programs or operations including contractors and subcontractors, and any other persons who are or have been audited or under investigation by the Finance Board's Office of Inspector General (OIG) in order to determine whether the agency or these individuals have been or are engaging in waste, fraud, or abuse with respect to Finance Board programs or operations or other activities that violate federal criminal laws, regulations, or procedures.

2. Complainants and witnesses.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files on audits and investigations including audit and investigative reports and related documents generated or obtained prior to, during the course of, or subsequent to an audit or investigation. It includes electronic and hard copy case tracking systems, databases containing investigatory information, ''Hotline'' telephone logs, auditor or investigator work papers and memoranda, and letter referrals to or from management or others.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. App. 4(a)(1) and 6(a)(2).

PURPOSE(S):

The OIG and other audit and investigative agencies collect, maintain, and use these records to conduct inquiries and investigations and prepare audits, reports, or other documents relating to potential violations of law in the administration of Finance Board programs and operations and to manage the OIG investigatory program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Under normal circumstances, the OIG will not provide individually identifiable records. However, under those unusual circumstances when the OIG must release information contained in an individually identifiable record, the OIG will maintain proper safeguards to protect the information from

unwarranted invasion of personal privacy. Subject to this general limitation, these records, or information therefrom, may be disclosed as a routine use to:

1. The appropriate Federal, State, local, or international agency or authority responsible for auditing, investigating, or prosecuting a violation or potential violation of a criminal or civil law, rule, or regulation or for enforcing or implementing a statute, rule, regulation, or order, if information in the system of records indicates such a violation.

2. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings when the information is relevant and necessary and the Finance Board is a party to the proceeding or has a significant interest in the proceeding.

3. The legal representative of the Finance Board or another federal agency, including the U.S. Department of Justice, or other retained counsel, when the Finance Board or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.

4. A grand jury agent pursuant to a grand jury subpoena or to a prosecutor for the purpose of introducing the record to a grand jury.

5. A congressional office in response to an inquiry made at the request of the subject individual.

6. The subjects of an audit or investigation and their representatives or third party sources during the course of an investigation, in order to obtain information or assistance relevant or pertinent to the audit or investigation or relating to an audit, trial, hearing, or any other authorized activity of the OIG.

7. Any source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary for the OIG to obtain information relevant to an OIG audit or investigation or for the Finance Board to obtain information concerning the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or issuance of a grant, license, or other benefit.

8. Another federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to, the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, or the rendering of advice requested by the OIG.

9. Other federal Offices of Inspector General, the Government Accountability Office, or a private party with which the OIG or the Finance Board has contracted, for the purpose of auditing, reviewing, or conducting quality assessments or peer reviews of the OIG, provided the record will not be transferred in a form that is individually identifiable, and provided further that the entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

10. A consultant, person, or entity that contracts or subcontracts with the Finance Board or the OIG, to the extent necessary for the performance of the contract or subcontract, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.

11. A governmental, public, professional, or self-regulatory licensing organization when the record indicates, either by itself or in combination with other information, a violation or potential violation of professional standards, or reflects on the qualifications of an individual who is licensed or who is seeking to become licensed.

12. A federal agency responsible for considering a suspension or debarment action to the extent the record is necessary and relevant to the action.

13. The U.S. Department of the Treasury, federal debt collection centers, other appropriate federal agencies, and private collection contractors or other third parties authorized by law, for the purpose of collecting or assisting in the collection of delinquent debts owed to the Finance Board. Disclosure will be limited to the individual's name, Social Security number, and other information necessary to establish the identity of the individual, and the existence, validity, amount, status, and history of the debt.

In addition to the foregoing routine uses, a record that is contained in this system and derived from another Finance Board system of records may be disclosed as a routine use as specified in the **Federal Register** notice of the system of records from which the records derived.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, computer disks, electronic media, and reports on each investigation.

RETRIEVABILITY:

Records generally are indexed by name of person under audit or investigation, audit or investigation number, referral number, or audit or investigative subject matter.

SAFEGUARDS:

File folders are maintained in safes or lockable metal file cabinets stored in offices that are locked when not in use. Computer disks and electronic media are locked in the lockable metal file cabinets with their related file folders, and information not so lockable is kept in individual offices in locked or password protected computer hardware. Only specifically authorized personnel have access to the information in the cabinets and individual offices.

RETENTION AND DISPOSAL:

Records in file folders are retained as long as needed and then destroyed by shredding. Computer disks are cleared, retired, or destroyed when no longer useful. Entries on electronic media are deleted or erased when no longer needed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Inspector General, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in

accordance with the procedures set forth in 12 CFR part 913.

RECORD SOURCE CATEGORIES:

The OIG collects information from many sources including the subject individuals, employees of the Finance Board and the Federal Home Loan Bank System, other government sources, witnesses and informants, and nongovernmental sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(2) or (5), a record contained in this system is exempt from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f), to the extent that the records consists of investigatory material compiled:

(1) For law enforcement purposes (552a(k)(2)); or

(2) For the purpose of determining suitability, eligibility, or qualifications for federal civilian employment or federal contracts, if disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence (552a(k)(5)).

Notwithstanding these exemptions, the Finance Board will provide a record if any right, privilege, or benefit to which an individual otherwise would be entitled by Federal law, or for which the individual otherwise would be eligible, is denied as a result of the maintenance of the record, except to the extent that disclosure of the record would reveal the identity of a source who furnished information to the government under an express promise that his or her identity would be held in confidence.

7. Add a new system of records entitled FHFB–7 Federal Home Loan Bank Examination Work Papers to read as follows:

FHFB–7

SYSTEM NAME:

Federal Home Loan Bank Examination Work Papers.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Households participating in certain affordable housing programs administered by the Federal Home Loan Banks.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may contain information relating to the household including names, address, and incomes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

12 U.S.C. 1422a(a)(3), 1430(j), and 1440.

PURPOSE(S):

1. Records are collected and maintained in order to provide documentation necessary to determine whether a Federal Home Loan Bank is operating safely and soundly and in compliance with applicable laws and regulations governing the Bank's Affordable Housing Program.

2. To provide information necessary to schedule and conduct examinations and compliance audits of the Federal Home Loan Banks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

RECORDS OR INFORMATION THEREFROM, MAY BE DISCLOSED AS A ROUTINE USE TO:

1. Finance Board staff to determine statutory and regulatory program compliance by Federal Home Loan Banks.

2. The Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where there is an indication of a violation or potential violation of civil or criminal law or regulation.

3. A congressional office in response to an inquiry made at the request of that individual.

4. In litigation before a court or in an administrative proceeding being conducted by a federal agency.

5. Respond to a request for discovery or for appearance of a witness.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be maintained in file folders and computer disks.

RETRIEVABILITY:

Records are filed as part of the work papers for an examination or audit of a Federal Home Loan Bank, by name of Bank and date of the audit or examination.

SAFEGUARDS:

File folders are maintained in safes or lockable metal file cabinets stored in offices that are locked when not in use. Only specifically authorized personnel have access to the information in the cabinets and individual offices.

RETENTION AND DISPOSAL:

Records in file folders are retained as long as needed and then destroyed by shredding. Computer disks are cleared, retired, or destroyed when no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Supervision, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD SOURCE CATEGORIES:

Federal Home Loan Banks, Federal Home Loan Bank members, and information submitted by individuals to members for program enrollment and for qualification for a mortgage loan.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

8. Add a new system of records entitled FHFB–8 Personal Identity Verification (PIV) Management System to read as follows:

FHFB–8

SYSTEM NAME:

Personal Identity Verification (PIV) Management System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, and Operational Research Consultants, Inc., 11250 Waples Mill, South Tower Suite 210, Fairfax VA 22030.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to Finance Board facilities, including employees, applicants for employment or contracts, contractors, students, interns, affiliates, and individuals formerly in any of these positions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records may include full name, date of birth, image (photograph), fingerprints, organization affiliation (e.g., employee or contractor), organization/office of assignment, grade, e-mail address, United States citizenship status, results of background investigation, and information necessary to the request for a card, registration, verification, and issuance procedures, the index/database of active and invalid PIV cards, and the information stored on the PIV cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Homeland Security Presidential Directive 12, Policy for a Common Identification Standard for Federal Employees and Contractors (August 27, 2004).

PURPOSE(S):

1. To ensure the safety and security of Finance Board facilities, systems, and information, and our occupants and users.
2. To verify that all persons entering Finance Board facilities are authorized to do so.
3. To track and control PIV cards issued to persons entering and exiting Finance Board facilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

RECORDS OR INFORMATION THEREFROM, MAY BE DISCLOSED AS A ROUTINE USE TO:

1. The legal representative of the Finance Board or another federal agency, including the U.S. Department of Justice, or other retained counsel, when the Finance Board or any of its employees are a party to or have a significant interest in litigation or an administrative proceeding.
2. A court, magistrate, administrative tribunal, or alternative dispute resolution mediator in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings when the information is relevant and necessary and the Finance Board or any of its employees are a party to or have a significant interest in the proceeding.
3. The appropriate federal, state, local, or international agency or authority responsible for enforcing, investigating, or prosecuting a violation or potential violation of a criminal or civil law, rule, or regulation, or for enforcing or implementing a statute, rule, regulation, or order, if, except as noted on Standard Forms 85, 85–P, and 86, information in the system of records indicates such a violation.
4. A congressional office in response to an inquiry made at the request of the subject individual.
5. A consultant, person, or entity that contracts or subcontracts with the Finance Board, to the extent necessary for the performance of the contract or subcontract, provided that the person or entity acknowledges in writing that it is required to maintain Privacy Act safeguards for the information.
6. Any source, including a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, but only to the extent necessary to obtain information relevant to the hiring or retention of an individual, the issuance of a security clearance, the letting of a contract, or issuance of a grant, license, or other benefit.
7. Another federal agency if the records are relevant and necessary to carry out that agency's authorized functions and to the decision on a matter, including, but not limited to, the hiring or retention of an individual, the issuance of a security clearance, the reporting of an investigation of an individual, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency.
8. A federal, state, or local agency, other appropriate entities or individuals, or through established liaison channels to selected foreign governments, to enable an intelligence agency to carry out its responsibilities under the National Security Act of 1947 as amended, the CIA Act of 1949 as amended, Executive Order 12333 or any successor order, applicable national security directives, or classified implementing procedures approved by the Attorney General and promulgated pursuant to such statutes, orders, or directives.
9. Notify another federal agency when, or verify whether, a PIV card is no longer valid.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICE FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders and electronic media.

RETRIEVABILITY:

Records are retrievable by name, e-mail address, other ID number, PIV card serial number, image (photograph), or fingerprint.

SAFEGUARDS:

File folders are maintained in locked cabinets in secure facilities and access to the files is restricted to individuals whose role requires use of the records. The computer servers in which records are stored are located in facilities that are secured by alarm systems and off-master key access. The computer servers themselves are password-protected. Individuals accessing the system are authenticated using encrypted certificates and data stored to the database require digital signatures. Communication between client and servers is encrypted by https or VPN (virtual private network). Access to individuals working at guard stations is password-protected; each person granted access to the system at guard stations is individually authorized to use the system. A Privacy Act Warning Notice appears on the monitor screen when records containing information on individuals are first displayed. Data exchanged between the servers and the client PCs at the guard stations and badging office are encrypted. Backup tapes are stored in a locked and controlled room in a secure, off-site location.

An audit trail is maintained and reviewed periodically to identify unauthorized access. Persons given roles in the PIV process must complete training specific to their roles to ensure they are knowledgeable about how to protect individually identifiable information.

RETENTION AND DISPOSAL:

Records relating to persons' access covered by this system are retained in accordance with General Records Schedule 18 Security and Protective Services Records approved by the National Archives and Records Administration. The records are disposed in accordance with our disposal policies. Unless retained for specific, ongoing security investigations, records of access are maintained for 2 years and then destroyed.

In accordance with HSPD–12, the Finance Board deactivates PIV cards within 18 hours of cardholder

separation, loss of card, or expiration. The information on PIV cards is maintained in accordance with General Records Schedule 11 Space and Maintenance Records. PIV cards are destroyed by cross-cut shredding no later than 90 days after deactivation.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Management, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006.

NOTIFICATION PROCEDURE:

Direct inquiries as to whether this system contains a record pertaining to an individual to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD ACCESS PROCEDURES:

Direct requests for access to a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

CONTESTING RECORD PROCEDURES:

Direct requests to amend a record to the Privacy Act Official, Federal Housing Finance Board, 1625 Eye Street, NW., Washington, DC 20006, in accordance with the procedures set forth in 12 CFR part 913.

RECORD SOURCE CATEGORIES:

Employee, contractor, or applicant; sponsoring agency; former sponsoring agency; other federal agencies; contract employer; former employer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Date: October 11, 2006.

By the Federal Housing Finance Board.

John P. Kennedy,

General Counsel.

[FR Doc. E6–17176 Filed 10–16–06; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 1, 2006.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Walter W. Hilgenberg, Prior Lake, Minnesota, and Eric W. Hilgenberg Trust, Eric W. Hilgenberg, and Jennifer J. Hilgenberg, individually and as trustee, Rosemont, Minnesota, and Stuart A. Voigt, Apple Valley, Minnesota; to acquire voting shares of Commercial Bancshares, Inc., Bloomington, Minnesota, and thereby indirectly acquire voting shares of First Commercial Bank, Bloomington, Minnesota.

B. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Jeffrey D. and Ruby L. Johnson, both of Midwest City, Oklahoma, and Jack L. and Linda J. Justice, both of Pauls Valley, Oklahoma; to acquire voting shares of MidWest Community Financial Corporation, Midwest City, Oklahoma, and thereby indirectly acquire voting shares of Canute Bancshares, Inc., Midwest City, Oklahoma, and The First State Bank of Canute, Canute, Oklahoma.

Board of Governors of the Federal Reserve System,

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17196 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-16705) published on page 59789 of the issue for Wednesday, October 11, 2006.

Under the Federal Reserve Bank of Philadephia heading, the entry for Connestoga Bancorp, Inc., Chester Springs, Pennsylvania, is revised to read as follows:

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Conestoga Bancorp, Inc., Chester Springs, Pennsylvania; to merge with PSB Bancorp, Inc., Philadelphia, Pennsylvania, and thereby indirectly acquire voting shares of First Penn Bank, Philadelphia, Pennsylvania.

In connection with this application, Applicant also has applied to acquire Ironbridge Holding, Inc., Philadelphia, Pennsylvania, and thereby engage in providing management consulting and counseling activities, pursuant to section 225.28(b)(9)(i)(A)(1) of Regulation Y.

In addition, Applicant also has applied to acquire Jade Abstract Company, Feasterville,Pennsylvania, and engage in providing real estate settlement services, and Jade Insurance Agency, Inc., Feasterville, Pennsylvania, and engage in providing credit insurance, pursuant to sections 225.28(b)(2)(viii) and 225.28(b)(11)(i) of Regulation Y respectively.

Comments on this application must be received by November 3, 2006.

Board of Governors of the Federal Reserve System, October 11, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17152 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-16468) published on page 58864 of the issue for Thursday, October 5, 2006.

Under the Federal Reserve Bank of Kansas City heading, the entry for First Miami Bancshares, Inc., is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Miami Bancshares, Inc., Miami, Oklahoma; to acquire up to 100 percent of the voting shares of Bank of Billings, Billings, Missouri.

Comments on this application must be received by October 30, 2006.

Board of Governors of the Federal Reserve System, October 11, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17152 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E6-16468) published on page 58864 of the issue for Thursday, October 5, 2006.

Under the Federal Reserve Bank of Kansas City heading, the entry for First Miami Bancshares, Inc., is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Miami Bancshares, Inc., Miami, Oklahoma; to acquire up to 100 percent of the voting shares of Bank of Billings, Billings, Missouri.

Comments on this application must be received by October 30, 2006.

Board of Governors of the Federal Reserve System, October 11, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17153 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2006.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. TransCommunity Financial Corporation, Glen Allen, Virginia; to acquire 100 percent of the voting shares of Bank of Rockbridge, Lexington, Virginia (in organization).

B. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. 1st Jackson Bancshares, Inc., Stevenson, Alabama; to acquire 100 percent of the voting shares of The Peoples Bancshares, Inc., Sardis, Tennessee, and thereby indirectly acquire voting shares of The Peoples Bank, Sardis, Tennessee.

2. Ameris Bancorp, Moultrie, Georgia; to merge with Islands Bancorp, and thereby indirectly acquire Islands Community Bank, National Association, both of Beaufort, South Carolina.

3. CPB Bancshares, Inc., Church Point, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of Church Point Bank and Trust Company, both of Church Point, Louisiana.

4. Oglethorpe Bank Holding Company, Brunswick, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Oglethorpe Bank, Brunswick, Georgia.

C. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Northstar Financial Group, Inc., Bad Axe, Michigan; to merge with Valley Financial Corp., and thereby indirectly acquire voting shares of Community Bank, both of Caro, Michigan.

Board of Governors of the Federal Reserve System, October 11, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17154 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 9, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Central Financial Holdings, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Central Bank, Tampa, Florida (in organization).

2. Heywood Bancshares, Inc., Northfield, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Northfield, Northfield, Minnesota.

B. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. United Bancorporation, Osseo, Wisconsin; to merge with Midwest

Bancorporation, Billings, Montana, and thereby indirectly acquire Clarke County State Bank, Osceola, Iowa, Farmers & Merchants State Bank, Iroquois, South Dakota, and Farmers State Bank, Stickney, South Dakota.

Board of Governors of the Federal Reserve System, October 12, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17194 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 1, 2006.

A. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. First Internet Bancorp, Indianapolis, Indiana; to acquire Landmark Financial Corporation, Indianapolis, Indiana, and thereby indirectly acquire Landmark Savings Bank, Indianapolis, Indiana, and Landmark Mortgage Company, Indianapolis, Indiana, and thereby engage in the operation of a savings association and lending activities, pursuant to sections 225.28(b)(1) and (b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, October 12, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–17195 Filed 10–16–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 p.m., Monday, October 23, 2006.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, October 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–8757 Filed 10–13–06; 2:47 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Extension of Collection; Comment Request; Title III and VII State Program Report

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the extension of collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days of public comment in response to the notice. This notice solicits comments on the information collection requirements relating to Title III and VII State Program Report.

DATES: Submit written or electronic comments on the collection of information by December 18, 2006.

ADDRESSES: Submit electronic comments on the collection of information to: *saadia.greenberg@aoa.hhs.gov.* Submit written comments on the collection of information to Administration on Aging, Office of Evaluation, Washington, DC 20201 Attention: SPR Comments.

FOR FURTHER INFORMATION CONTACT: Saadia Greenberg at 202–357–3554 or e-mail: *saadia.greenberg@aoa.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the extension of collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

The Older Americans Act (OAA) requires annual program performance reports from States. In compliance with this OAA provision, AoA developed a new State Program Report (SPR) in 1996 as part of its National Aging Program Information System (NAPIS). The SPR collects information about how State Agencies on Aging expend their OAA funds as well as funding from other sources for OAA authorized supportive services. The SPR also collects information on the demographic and functional status of the recipients. This collection was revised in November 2004 (OMB Approval Number 0985–0008). The proposed data collection continuation format remains unchanged from the November 2004 document. It may be found on the AoA Web site at *http://www.aoa.gov/prof/agingnet/NAPIS/docs/SPR-Modified-Form-11.08.04.pdf.* AoA estimates the burden of this collection of information as follows: 2,606 hours.

Dated: October 12, 2006.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. E6–17251 Filed 10–16–06; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006N–0018]

Anne L. Butkovitz; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Ms. Anne L. Butkovitz from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. FDA bases this order on a finding that Ms. Butkovitz was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product under the act. After being given notice of the proposed permanent debarment and her opportunity to request a hearing within the timeframe prescribed by regulation, Ms. Butkovitz failed to request a hearing. Ms. Butkovitz's failure to request a hearing constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective October 17, 2006.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brenda R. Friend, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

On June 7, 2005, the U.S. District Court for the District of Massachusetts accepted Ms. Anne L. Butkovitz's plea of guilty to one count of making a false statement, a Federal felony offense under 18 U.S.C. 1001. This offense was committed while Ms. Butkovitz was the clinical study coordinator at a safety site for a clinical trial.

As a result of this conviction, FDA served Ms. Butkovitz by certified mail on March 7, 2006, a notice proposing to permanently debar Ms. Butkovitz from providing services in any capacity to a person that has an approved or pending drug product application including, but not limited to, a biologics license application. The proposal also offered Ms. Butkovitz an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (c)(2)(A)(ii) of the act (21 U.S.C. 335a(a)(2)(A) and (c)(2)(A)(ii)), that Ms. Butkovitz was convicted of a felony under Federal law for conduct relating to the development or approval of a drug product, including the process for development or approval, of a drug product. Ms. Butkovitz was provided 30 days to file objections and request a hearing. Ms. Butkovitz did not request a hearing. Ms. Butkovitz's failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment (21 CFR 12.22(b)(1)).

II. Findings and Order

Therefore, the Director of the Center for Biologics Evaluation and Research, under section 306(a)(2)(A) of the act, and under authority delegated to the Director (FDA Staff Manual Guide 1410.35), finds that Ms. Butkovitz has been convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product.

As a result of the foregoing finding, Ms. Butkovitz is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application (section 306(c)(1)(B) of the act). A drug product means a drug, including a biological product, subject to regulation under sections 505, 512, or 802 of the act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262). Any person with an approved or pending drug product application including, but not limited to, a biologics license application, who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Ms. Butkovitz, in any capacity, during Ms. Butkovitz's permanent debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Ms. Butkovitz, during her permanent debarment, provides services in any capacity to a person with an approved or pending drug product application including, but not limited to, a biologics license application, Ms. Butkovitz will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Ms. Butkovitz during Ms. Butkovitz's permanent debarment (section 306(c)(1)(B) of the act).

Any application by Ms. Butkovitz for termination of debarment under section 306(d)(4) of the act should be identified with Docket Number 2006N–0018 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies (21 CFR 10.20(a)). The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday (21 CFR 10.20(j)(1)).

Dated: September 25, 2006.

Jesse Goodman,

Director, Center for Biologics Evaluation and Research.

[FR Doc. E6–17178 Filed 10–16–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning October 1, 2006, the interest rates for overpayments will remain at 7 percent for corporations and 8 percent for non-corporations, and the interest rate for underpayments will remain at 8 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2006–49, the IRS determined the rates of interest for the calendar quarter beginning October 1, 2006, and ending December 31, 2006. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). For corporate overpayments, the rate is the Federal short-term rate (5%) plus two percentage points (2%) for a total of seven percent (7%). For overpayments made by non-corporations, the rate is the Federal short-term rate (5%) plus three percentage points (3%) for a total of eight percent (8%). These interest rates are subject to change for the calendar quarter beginning January 1, 2007, and ending March 31, 2007.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Underpay-ments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4

Beginning date	Ending date	Underpay-ments (percent)	Overpayments (percent)	Corporate overpayments (Eff. 1–1–99) (percent)
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123106	8	8	7

Dated: October 6, 2006.

Jayson P. Ahern,

Acting Commissioner, Customs and Border Protection.

[FR Doc. E6–17150 Filed 10–16–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Notice of Meeting

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting date change.

SUMMARY: The Department of the Interior, Office of the Secretary is rescheduling the October 18, 2006, public meeting of the Exxon Valdez Oil Spill Public Advisory Committee to November 2, 2006.

DATES: November 2, 2006, at 8:30 a.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council Office, 441 West 5th Avenue, Suite 500, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 C Street, Suite 119, Anchorage, Alaska, 99501, (907) 271–5011.

SUPPLEMENTARY INFORMATION: The Public Advisory Committee was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska*, Civil Action No. A91–081 CV. The meeting agenda will include review and recommendations on the draft fiscal year 2007 work plan, an update on the injured resources and services list, an update on the herring restoration effort, and an orientation for new Public Advisory Committee members.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. E6–17232 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement, Draft Comprehensive Conservation Plan, and Draft Land Protection Plan for Texas Chenier Plain National Wildlife Refuge Complex

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of Availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the Draft Environmental Impact Statement (EIS), Draft Comprehensive Conservation Plan (CCP), and Draft Land Protection Plan (LPP) are available for the Texas Chenier Plain National Wildlife Refuge Complex. We prepared this CCP pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (NEPA); and we describe how the Service intends to manage this Refuge Complex over the next 15 years. This draft LPP was prepared pursuant to Service policy and the National Environmental Policy Act of 1969, and would expand the approved acquisition boundary for the four refuges within the Complex.

DATES: We must receive your comments on or before January 16, 2007.

ADDRESSES: A copy of the Draft EIS, CCP, and LPP is available on a compact disk (CD), and you may obtain a copy by writing: Doug St. Pierre, Natural Resource Planner, U.S. Fish and Wildlife Service, National Wildlife Refuge System, Southwest Region, Division of Planning, P.O. Box 1306, Albuquerque, NM 87103; or, Andy Loranger, Complex Manager, Texas Chenier Plain National Wildlife Refuge Complex, 509 Washington Street, Anahuac, TX 77514. Written comments may be mailed to the above addresses or submitted via electronic mail to: *doug_stpierre@fws.gov*. You may also access and download copies of the draft document at the following website address: *http://southwest.fws.gov/refuges/Plan/index.html*.

FOR FURTHER INFORMATION, PLEASE CONTACT: Doug St. Pierre, at 505–248–6636.

SUPPLEMENTARY INFORMATION: The National Wildlife System Administration Act of 1966, as amended by the National Wildlife Refuge Improvement Act of 1997 (16 U.S.C. 668dd–668ee et seq.) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C 4321–4370d).

Background: The Texas Chenier Plain National Wildlife Refuge Complex contains four refuges: Moody National Wildlife Refuge, Anahuac National Wildlife Refuge, McFaddin National Wildlife Refuge, and Texas Point National Wildlife Refuge. The refuges are located along the Texas Coast,

between Houston, Texas, and the Louisiana state line in Chambers, Jefferson, and Galveston Counties, Texas. All four refuges include the Migratory Bird Conservation Act as a primary authority and purpose.

Moody NWR was established in 1961 and today consists of a conservation easement on approximately 3,516 acres of coastal marsh. Anahuac NWR was established in 1963 and contains 34,339 acres of coastal marsh and adjoining uplands in fee title ownership. McFaddin NWR was established in 1980 and is 58,861 acres of primarily coastal marsh in a mix of fee title and conservation easements. Texas Point NWR was established in 1979 and consists of 8,952 acres of coastal marsh in fee title ownership.

The integrated EIS contains two sets of alternatives addressing two separate but related Federal Actions: (1) Refuge management alternatives for development of a CCP for the Complex, and (2) alternatives for expansion of the refuge acquisition boundaries.

Five refuge management alternatives are proposed and evaluated for the Refuge Complex. The first management alternative is the ''No Action'' alternative, required by NEPA, which would continue the current refuge management activities. Current habitat management activities include (1) water management; (2) wetland, prairie, and woodlot restoration; (3) moist soil management units; (4) cooperative rice farming; (5) fire management; (6) controlled livestock grazing; and (7) exotic/invasive species management. The second management alternative emphasizes intensifying management of wetland habitats for waterfowl, shorebirds, wading birds, and other wetland-dependent migratory birds. The third management alternative emphasizes native habitat restoration and addressing threats from coastal land loss, altered hydrology, exotic species, and contaminants. The fourth management alternative, the Service's preferred alternative, emphasizes an integrated management approach combining (1) expanded habitat management and restoration programs, (2) new research and wildlife population monitoring, and (3) increased efforts to address major threats to ecosystem health. The fifth management alternative emphasizes a passive management approach. All five of these refuge management alternatives make wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Four refuge boundary expansion alternatives are proposed and evaluated. The first expansion alternative is the ''No Action'' alternative, required by NEPA, which would retain the current refuge acquisition boundaries. The second expansion alternative would expand the refuge boundary for Moody NWR by 5,050 acres; for Anahuac NWR by 20,500 acres; for McFaddin NWR by 7,190 acres; and for Texas Point NWR by 850 acres. The total expansion of 33,590 acres continues the historic focus on land acquisition primarily in coastal marsh and adjacent agricultural uplands. The third expansion alternative, the Service's preferred alternative, would expand the refuge boundary for Moody NWR by 7,920 acres; for Anahuac NWR by 47,750 acres; for McFaddin NWR by 7,190 acres; and for Texas Point NWR by 1,400 acres. The total expansion of 64,260 acres includes all of the coastal marsh and adjacent agricultural uplands from the second expansion alternative plus two important areas of native coastal prairie. The fourth expansion alternative would expand the refuge boundary for Moody NWR by 7,920 acres, for Anahuac NWR by 64,910, for McFaddin NWR by 29,890 acres, and for Texas Point NWR by 1,400 acres. The total expansion of 104,120 acres includes all of the lands in the third expansion alternative along with a large freshwater marsh north of the current McFaddin NWR and a near-coast bottomland hardwood area important to neotropical migratory birds. Lands acquired in the future would be managed according to the strategies contained in the Service's preferred management alternative.

Public Meetings: The Service will hold at least two public meetings in Chambers and Jefferson Counties, Texas, 30 days after publication of this notice to present the draft document, answer questions, and receive formal public comments. Notice of the meetings will be posted in local newspapers and other media outlets and given through special mailings to individuals and organizations that have expressed interest in this planning effort.

Editorial note: This document was received at the Office of the Federal Register October 11, 2006.

Dated: April 3, 2006.

Geoffrey L. Haskett,

Acting, Regional Director, U.S. Fish and Wildlife Service,Albuquerque, New Mexico.

[FR Doc. E6–17087 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Scientific Earthquake Studies Advisory Committee

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 106–503, the Scientific Earthquake Studies Advisory Committee (SESAC) will hold its fourteenth meeting. The meeting location is the Albuquerque Seismological Laboratory, 10002 Isleta Road, SE, Kirtland AFB, New Mexico 87117. The Committee is comprised of members from academia, industry, and State government. The Committee shall advise the Director of the U.S. Geological Survey (USGS) on matters relating to the USGS's participation in the National Earthquake Hazards Reduction Program.

The Committee will provide guidance on the USGS's contributions to the Global Seismographic Network and report preparation.

Meetings of the Scientific Earthquake Studies Advisory Committee are open to the public.

DATES: October 30, 2006, commencing at 9 a.m. and adjourning at noon on October 31, 2006.

Contact: Dr. David Applegate, U.S. Geological Survey, MS 905, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–6714, *applegate@usgs.gov.*

Dated: October 2, 2006.

Rama Kotra,

Acting Associate Director for Geology.

[FR Doc. 06–8716 Filed 10–16–06; 8:45 am]

BILLING CODE 4311–AM–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL, WYW163340]

Notice of Intent (NOI) To Prepare an Environmental Impact Statement (EIS) and Notice of Public Meeting on a Federal Coal Lease Application Filed by the Antelope Coal Company in the Decertified Powder River Federal Coal Production Region, Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent and notice of public hearing.

SUMMARY: Pursuant to Section 102 (2) (C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM),

Casper Field Office announces its intent to prepare an EIS on the potential impacts of a proposal to surface mine a tract of Federal coal as requested by Antelope Coal Company (Antelope) in Lease-by-Application (LBA) case number WYW163340. Under the provisions of 43 Code of Federal Regulations (CFR) 3425.1, the Antelope Coal Company (Antelope) has submitted a competitive coal LBA for a maintenance tract of Federal coal. The tract is known as the West Antelope II Tract and is adjacent to the Antelope Mine in Campbell and Converse Counties.

DATES: This notice initiates the public scoping process. To provide the public with an opportunity to review the proposal and gain understanding of the LBA process, the BLM will host a meeting on November 1, 2006 at 7 p.m. at the Best Western Douglas Inn, 1450 Riverbend Drive, Douglas, Wyoming. At the meeting, the public is invited to submit comments and resource information, plus identify issues or concerns to be considered in the LBA process. The BLM can best use public input if comments and resource information are submitted by December 1, 2006. The BLM will announce future public meetings and other opportunities to submit comments on this project at least 15 days prior to the events. Announcements will be made through local news media and the Casper Field Office's Web site, which is: *http://www.wy.blm.gov/cfo.*

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs, BLM Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604. Ms. Doelger or Mr. Karbs may also be reached at (307) 261–7600.

ADDRESSES: Please submit written comments or concerns to the BLM Casper Field Office, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82604. Written comments or resource information may also be hand-delivered to the BLM Casper Field Office or sent by facsimile to the attention of Nancy Doelger at (307) 261–7587. Comments may be sent electronically to *casper_wymail@blm.gov.* Please put ''West Antelope II LBA Tract/Nancy Doelger'' in the subject line.

Members of the public may examine documents pertinent to this proposal by visiting the Casper Field Office during its business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Under the provisions of 43 Code of Federal Regulation (CFR) 3425.1, Antelope submitted an application on April 6, 2005 for a competitive coal lease for a maintenance tract adjacent to the company's Antelope Mine in Campbell and Converse Counties, Wyoming. A maintenance tract is a parcel of land containing Federal coal reserves that can be leased to maintain production at an existing mine. The tract is known as the West Antelope II Tract. Consistent with Federal regulations under NEPA and Minerals Leasing Act of 1920, as amended, the BLM must prepare an environmental analysis prior to holding a competitive Federal coal lease sale. The Powder River Regional Coal Team reviewed this LBA at a public meeting held on April 27, 2005, in Gillette, Wyoming, and recommended that the BLM process it.

The West Antelope II Tract application includes approximately 429.7 million tons of in-place Federal coal underlying the following lands in Campbell and Converse counties, Wyoming:

T. 40 N., R. 71 W., 6th PM, Wyoming
- Section 5: Lot 18;
- Section 8: Lots 1 through 3, 6 through 11, 14 through 16;
- Section 9: Lots 2 through 16;
- Section 10: Lots 5, 6, 11 through 14;

T. 41 N., R. 71 W., 6th PM, Wyoming
- Section 9: Lots 9 through 16;
- Section 10: Lots 11 through 15;
- Section 14: Lots 3 and 4;
- Section 15: Lots 1 through 5, 12, 13;
- Section 20: Lots 14 through 16;
- Section 21: Lots 1 through 16;
- Section 22: Lots 2, 7, 8, 14 through 16;
- Section 27: Lots 6 through 11;
- Section 28: Lots 1 through 8;
- Section 29: Lots 1 through 3, 6 through 8.

Containing 4,108.6 acres more or less.

Antelope proposes to mine the tract as a part of the Antelope Mine. At the 2005 mining rate of 30 million tons per year, the coal included in the West Antelope II Tract would extend the life of the Antelope Mine by as many as 14 years. In accordance with 43 CFR 3425.1–9, the BLM may modify the LBA adding or subtracting lands to avoid bypassing Federal coal or to increase potential competitive interest in the tract. The BLM has identified a study area that includes unleased Federal coal in and around the tract that will be evaluated for inclusion in the tract.

Lands in the application contain private surface estate overlying the Federal coal. In the study area, the surface estate overlying the Federal coal is both privately- and federally-owned. The federally-owned lands are part of the Thunder Basin National Grassland (TBNG), National Forest System administered by the U.S. Department of Agriculture Forest Service (FS).

The Antelope Mine is operating under approved mining permits from the Land Quality and Air Quality Divisions of the Wyoming Department of Environmental Quality.

The FS and the Office of Surface Mining Reclamation and Enforcement (OSM) will be cooperating agencies in the preparation of the EIS. Before the tract can be leased the FS must consent to leasing the portion of the tract that is part of the TBNG. If the West Antelope II Tract is leased to the applicant, the new lease must be incorporated into the existing mining and reclamation plan for the adjacent mine. Before the Federal coal in the tract can be mined the Secretary of the Interior must approve the revised Mineral Leasing Act (MLA) mining plan. The OSM is the Federal agency that is responsible for recommending approval, approval with conditions, or disapproval of the revised MLA mining plan to the Office of the Secretary of the Interior. Other cooperating agencies may be identified during the scoping process.

The BLM will provide interested parties the opportunity to submit comments or relevant information or both. This information will help the BLM identify issues to be considered in preparing a draft EIS for the West Antelope II Tract. Issues that have been identified in analyzing the impacts of previous Federal coal leasing actions in the Wyoming Powder River Basin (PRB) include the need for resolution of conflicts between existing and proposed oil and gas development and coal mining on the tracts proposed for coal leasing; potential impacts to big game herds and hunting; potential impacts to sage grouse; potential impacts to listed threatened and endangered species; potential health impacts related to blasting operations conducted by the mines to remove overburden and coal; the need to consider the cumulative impacts of coal leasing decisions combined with other existing and proposed development in the Wyoming PRB; and potential site-specific and cumulative impacts on air and water quality.

Your response is important and will be considered in the EIS process. If you do respond, we will keep you informed of the availability of environmental documents that address impacts that might occur from this proposal.

We release all comments to the public, including names, addresses, phone numbers, e-mail addresses, and other personal identifying information.

If you comment as a private individual in your personal capacity, you may ask us to withhold personal identifying information from the public.

You must do so prominently in writing at the beginning of your comments and must tell us precisely what you want us to withhold. You also must explain in detail why releasing that personal identifying information to the public would constitute a clearly unwarranted invasion of privacy. General assertions that are not supported by specific facts will not meet that burden.

We will withhold personal identifying information from release to the public in response to your request only where, in our judgment, you present sufficient factual justification for our doing so under current laws, regulations, and court decisions. Typically, notwithstanding your request, in all but the most exceptional circumstances, we will release to the public all of the personal identifying information that you submit.

If you comment as or on behalf of an organization or business, we will release your comments to the public in their entirety, including all personal identifying information. We will not consider a request from an organization or business, or anyone commenting on behalf of an organization or business, that we withhold any personal identifying information from release to the public.

Dated: September 22, 2006.

Robert A. Bennett,

State Director.

[FR Doc. E6–17143 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–025–06–5870–EU; HAG 06–0165]

Sale of Public Land; Harney County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: This notice announces the proposed sale of 24 parcels of public land, totaling 2905.42 acres, located in Harney County, Oregon at not less than appraised market value. These parcels are proposed to be sold through competitive and modified competitive procedures.

DATES: Written comments concerning the proposed sale must be received by the BLM on or before December 1, 2006.

ADDRESSES: Address all written comments to Joan Suther, Three Rivers Resource Area Field Manager, Burns District Office, 28910 Hwy 20 West, Hines, Oregon 97738. Comments expressed verbally or in electronic format will not be accepted.

FOR FURTHER INFORMATION CONTACT: Skip Renchler, Realty Specialist, at (541) 573–4443.

SUPPLEMENTARY INFORMATION: The following described public lands in Harney County, Oregon are suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719). The lands are difficult and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The parcels proposed for sale are identified as suitable for disposal in the Three Rivers Resource Management Plan, dated August 1992. All of the land described is within the Willamette Meridian. The parcels proposed for sale are identified as follows.

Serial No.	Legal description	Acres	Market value/ minimum bid	Bidding procedure	Designated bidder(s)
OR–56577 ...	T.27 S., R.34 E., sec. 21, NE¼SE¼	40.00	$3,400	Competitive	None.
OR–61541 ...	T.19 S., R.34 E., sec. 17, E½NW¼	80.00	16,000	Modified Competitive.	John and Judy Ahmann.
OR–61542 ...	T.22 S., R.30 E., sec. 7, lot 3, NE¼SW¼, NW¼SE¼.	119.53	22,700	Competitive	None.
OR–61543 ...	T.22 S., R.30 E., sec. 10, lot 1.	0.51	200	Modified Competitive.	Gerard J. LaBrecque
OR–61544 ...	T.24 S., R.33 E., sec. 30, NE¼	160.00	21,600	Competitive	None.
OR–61545 ...	T.24 S., R.33 E., sec. 33, E½NE¼; sec. 34, N½NW¼, SW¼NW¼, NW¼SW¼.	240.00	58,100	Competitive	None.
OR–61546 ...	T.25 S., R.32½ E., sec. 13, W½NE¼ ..	80.00	9,100	Competitive	None.
OR–61547 ...	T.25 S., R32½ E., sec. 24, lot 2, NW¼NE¼.	79.81	9,200	Competitive	None.
OR–61548 ...	T.26 S., R.30 E., South of Malheur Lake, sec. 35, E½SE¼; T.27 S., R.30 E., sec. 2, lot 1.	119.76	19,100	Competitive	None.
OR–61549 ...	T.26 S., R.31 E., North of Malheur Lake, sec. 5, four unnumbered government lots in N½N½.	160.00	16,800	Competitive	None.
OR–61550 ...	T.26 S., R.31 E., North of Malheur Lake, sec. 5, S½SW¼; sec. 6, S½SE¼; sec. 7, NE¼NE¼.	200.00	19,600	Competitive	None.
OR–61551 ...	T.26 S., R.31 E., North of Malheur Lake, sec. 9, S½NW¼.	80.00	8,000	Competitive	None.
OR–61552 ...	T.26 S., R.31 E., North of Malheur Lake, sec. 22, S½NW¼.	80.00	8,000	Competitive	None.
OR–61553 ...	T.26 S., R.33 E., sec 34, N½NW¼	80.00	9,800	Competitive	None.
OR–61554 ...	T.26 S., R.34 E., sec. 4, SW¼SW¼; sec. 5, SE¼SE¼.	80.00	6,800	Modified Competitive.	Bell A Grazing Cooperative, Thompson Ranches, Inc.

Serial No.	Legal description	Acres	Market value/ minimum bid	Bidding procedure	Designated bidder(s)
OR–61555 ...	T.26 S., R.34 E., sec. 8, NE¼NW¼	40.00	3,900	Modified Competitive.	Bell A Grazing Cooperative, Thompson Ranches, Inc.
OR–61556 ...	T.26 S., R.34 E., sec. 17, N½SE¼, SE¼SE¼.	120.00	9,700	Modified Competitive.	Nevin L. and Shirley M. Thompson.
OR–61557 ...	T.26 S., R.34 E., sec. 22, SW¼NE¼ ...	40.00	3,200	Modified Competitive.	Walter B. Smith Estate, Nevin L. and Shirley M. Thompson.
OR–61558 ...	T.26 S., R.34 E., sec. 28, NE¼NE¼	40.00	3,200	Modified Competitive.	Nevin L. and Shirley M. Thompson, Zachary O. Sword.
OR–61559 ...	T.27 S., R.31 E., sec. 5, S½SW¼, SW¼SE¼; sec. 8, W½.	440.00	48,400	Competitive	None.
OR–61560 ...	T.27 S., R.31 E., sec. 6, E½SW¼, SE¼.	240.00	28,800	Competitive	None.
OR–61561 ...	T.27 S., R.34 E., sec. 9, SW¼NE¼, W½SE¼, SE¼SE¼.	160.00	18,400	Competitive	None.
OR–62938 ...	T.22 S., R.33 E., sec. 19, lot 4; sec. 30, lots 1, and 2, E½NW¼.	185.81	33,100	Modified Competitive.	Rattlesnake Creek Land and Cattle Co., Gene Watson., Don G. Toelle—Trustee, and John L. Toelle.
OR–63606 ...	T.25 S., R.31 E., sec. 19, NE¼SE¼	40.00	7,200	Modified Competitive.	Juniper Basin Ranch, Stanley L. and Barbara F. Kull.
Total	.....	2,905.42			

The sale will include all mineral interests of the United States unless otherwise noted below.

The following will be included in, and will survive, the sale and conveyances of the land:

All Parcels

1. A right-of-way for ditches and canals will be reserved to the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

2. A notice and indemnification statement under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). All parcels are subject to the requirements of Section 120(h) (42 U.S.C. 9620) holding the United States harmless from any release of hazardous materials that may have occurred as a result of the unauthorized use of the property by other parties.

3. No representation, warranty, or covenant of any kind, express or implied, is given or made by the United States as to access to or from any parcel of land, the title, whether or to what extent the land may be developed, its physical condition, present or potential uses, or any other circumstance or condition.

4. All conveyance documents will be issued subject to all valid existing rights and reservations of record. All persons, other than the successful bidders, claiming to own unauthorized improvements on the land are allowed 60 days from the date of sale to remove the improvements.

OR–61543 and OR–61544

1. A wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977.

2. A flood plain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–61545

1. A reservation to the United States of all geothermal steam resources subject to the provisions of the Act of December 24, 1970 (84 Stat. 1566).

2. A wetland/riparian covenant pursuant to the authority contained in Section (4) of Executive Order 11990 of May 24, 1977.

3. A flood plain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–61547

1. A flood plain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

2. A reservation for a road right-of-way for access to the Malheur National Wildlife Refuge held by the U.S. Fish and Wildlife Service.

OR–61549, OR–61550, OR–61551

1. A flood plain covenant pursuant to the authority contained in Section 3(d) of Executive Order 11988 of May 24, 1977.

OR–62938

1. A reservation to the United States for a right-of-way for access road purposes.

2. A portion of the property (150.65 acres) will be conveyed by quitclaim deed issued by the United States. Mineral estate is held by a third party and cannot be conveyed by the United States.

3. Remaining 35.16 acres will be conveyed by patent and will include all mineral interests of the United States.

It is recommended that before submitting a bid, a prospective purchaser obtain a title search, conduct an inspection of the property and check with the appropriate city or county planning department to verify approved uses.

The land described herein is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of this notice, whichever occurs first.

Competitive Bidding Procedures

The Federal Land Policy and Management Act and its implementing sale regulations at 43 CFR part 2710 provide that competitive bidding will be

the general method of selling land supported by factors such as competitive interest, accessibility, and usability of the parcel, regardless of adjacent ownership.

Under competitive procedures the land will be sold to any qualified bidder submitting the highest bid. Bidding will be by sealed bid followed by an oral auction to be held at 2 p.m. PST on Wednesday, December 13, 2006, at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon.

To qualify for the oral auction bidders must submit a sealed bid meeting the requirements as stated below. The highest valid sealed bid will become the starting bid for the oral auction. Bidding in the oral auction will be in minimum increments of $100. The highest bidder from the oral auction will be declared the prospective purchaser. If no valid bids are received, the parcel will be declared unsold and offered using competitive procedures for unsold parcels on a continuing basis until sold or withdrawn from sale.

Modified Competitive Procedures

Modified competitive procedures are allowed by the regulations at 43 CFR 2710.0–6(c)(3)(ii) to provide exceptions to competitive bidding to assure compatibility with existing and potential land uses.

Under modified competitive procedures the designated bidders identified in the table above will be given the opportunity to match or exceed the apparent high bid.

The apparent high bid will be established by the highest valid sealed bid received in an initial round of public bidding. If two or more valid sealed bids of the same amount are received for the same parcel, that amount shall be determined to be the apparent high bid.

The designated bidders are required to submit a valid bid in the initial round of public bidding to maintain their preference consideration. The bid deposit for the apparent high bid(s) and the designated bidders will be retained and all others will be returned. The bid opening for this initial round of public bidding will be held at 2 p.m. PST on Wednesday, December 13, 2006, at the Burns District Office, BLM.

The designated bidders will be notified by certified mail of the apparent high bid. Where there are two or more designated bidders for a single parcel, they will be allowed 30 days to provide the authorized officer with (i) an agreement as to the division of the property or, (ii) if agreement cannot be reached, sealed bids for not less than the apparent high bid. Failure to submit an agreement or a bid shall be considered a waiver of the option to divide the property equitably and forfeiture of the preference consideration. Failure to act by all of the designated bidders will result in the parcel being offered to the apparent high bidder or being declared unsold, if no bids were received in the initial round of bidding.

Additional Terms and Conditions of Sale

All sealed bids must be submitted to the Burns District Office, at the address stated above, no later than 2 p.m. PST on Wednesday, December 13, 2006, when the bid opening and oral auction will be held.

The outside of bid envelopes must be clearly marked with ''BLM Land Sale,'' the parcel number and the bid opening date. Bids must be for not less than the appraised market value (minimum bid). Separate bids must be submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the Department of the Interior-BLM for not less than 20 percent of the amount bid. The bid envelope must also contain a statement showing the total amount bid and the name, mailing address, and phone number of the entity making the bid. A successful bidder for competitive parcels shall make an additional deposit at the close of the auction to bring the total bid deposit up to the required 20 percent of the high bid. Personal checks or cash will be acceptable for this additional deposit only.

If any of the parcels are not sold using the procedures described above, the parcel will be reoffered on a continuing basis in accordance with the procedures described in 43 CFR 2711.3–1. Sealed bids for unsold parcels will be accepted from any qualified bidder and held until the second Wednesday of each month at 2 p.m. PST when they will be opened. Bid openings will take place every month until the parcels are sold or withdrawn from sale. Bids for unsold parcels must meet the requirements described above for sealed bids.

Prospective purchasers will be allowed 180 days to submit the balance of the purchase price. Failure to meet this timeframe shall cause the deposit to be forfeited. The parcel will then be offered to the next lowest qualified bidder, or if no other bids were received, the parcel will be declared unsold.

Federal law requires that public land may be sold only to either (1) citizens of the United States, 18 years of age or over; (2) corporations subject to the laws of any State or of the United States; (3) a State, State instrumentality or political subdivision authorized to hold property; or (4) an entity legally capable of conveying and holding lands or interests therein under the laws of the State within which the lands to be conveyed are located. Certifications and evidence to this effect will be required of the prospective purchaser prior to sale.

A successful bid for a parcel will constitute an application for conveyance of those portions of the mineral estate being conveyed in accordance with Section 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). A nonrefundable fee of $50 will be required from the prospective purchaser for purchase of the mineral interests. Those mineral interests, to be conveyed simultaneously with the sale of the land, have been determined to have no known mineral value.

Public Comments

On or before December 1, 2006, any person may submit written comments regarding the proposed sale to the Three Rivers Resource Area Field Manager at the Burns District Office, Bureau of Land Management, 28910 Hwy 20 West, Hines, Oregon 97738. Comments or protests applicable to a specific parcel must be identified with the appropriate serial number.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Detailed information, including appraisal and environmental reports, relative to this public land sale is available on the Internet at *http://www.or.blm.gov/Burns* or at the Burns District Office during business hours. Inquiries also may be directed to Joan Suther, Field Manager, Skip Renchler or Holly Orr, Realty Specialists, Three Rivers Resource Area, Burns District

Office at the above address, or by phone (541) 573–4400.

Objections will be reviewed by the BLM, Burns District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711.1–2)

Dated: August 28, 2006.

Joan M. Suther,

Three Rivers Resource Area Field Manager.

[FR Doc. E6–17139 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet their administrative needs. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the west boundary and subdivisional lines and the subdivision of section 31, T. 10 N., R. 4 E., Boise Meridian, Idaho, was accepted July 5, 2006.

The plat representing the dependent resurvey of the south boundary and portion of the subdivisional lines, and the subdivision of sections 27, 33, 34, and 35, T. 8 S., R. 41 E., and the dependent resurvey of a portion of the west boundary and portions of the subdivisional lines and the subdivision of sections 2 through 7, T. 9 S., R. 41 E., Boise Meridian, Idaho, were accepted September 27, 2006.

These surveys were executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes. The lands surveyed are:

The plat representing the dependent resurvey of a portion of the south and west boundaries and a portion of the subdivisional lines, the subdivision of section 31, and a metes-and-bounds survey in section 31, T. 47 N., R. 4 W., Boise Meridian, Idaho, was accepted July 7, 2006.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 17, T. 46 N., R. 4 W., Boise Meridian, Idaho, was accepted September 28, 2006.

The plat representing the dependent resurvey of a portion of the west boundary and a portion of the subdivisional lines and the subdivision of section 7, T. 46 N., R. 4 W., Boise Meridian, Idaho, was accepted September 29, 2006.

Summary: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**. This survey was executed at the request of the Bureau of Indian Affairs to meet certain administrative and management purposes:

The plat representing the corrective dependent resurvey of portions of the west boundary and the subdivisional lines, and the dependent resurvey of the west boundary, portions of the south and north boundaries, subdivisional lines, and subdivision of sections 5, 8, 17, 18, and 19, and the further subdivision of sections 5, 8, 17, 19, 30, and 31, and the survey of a portion of the subdivisional lines, the 2002–2006 meanders of the Snake River and certain islands in the Snake River in sections 6 and 7, and the north boundary of the Fort Hall Indian Reservation in section 6, T. 4 S., R. 34 E., Boise Meridian, Idaho, was accepted August 31, 2006.

October 11, 2006.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. E6–17189 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Additional Information for a Public Hearing on the Draft Environmental Impact Statement (EIS) for the Proposed 5-Year Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2007–2012

AGENCY: Minerals Management Service (MMS), Interior.

SUMMARY: Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (42 U.S.C. 4321, *et seq.*), the Minerals Management Service (MMS) announced Public Hearings to solicit comments on the Draft EIS for the Proposed 2007–2012 OCS Oil and Gas 5-Year Leasing Program in the **Federal Register** notice on September 26, 2006. The notice did not include specific information on place and time for the Public Hearing in Norfolk, Virginia. That specific information is now attached below. Statements, both oral and written, will be received at the hearing. Persons wishing to speak may be put on the speakers' list by the MMS contact listed below in advance of the public hearing or may sign up at the hearing. Time limits may be set on oral testimony to allow time for all speakers to participate.

DATE AND LOCATION OF PUBLIC HEARING: November 14, 2006—Radisson Hotel, 700 Monticello Avenue, Norfolk, Virginia, 1 p.m., contact: Dr. Norman Froomer, (703) 787–1644. Information concerning the Draft EIS for the Proposed 5-Year Outer Continental Shelf Oil and Gas Leasing Program for 2007–2012 can be accessed at *http://www.mms.gov/5-year/.*

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Mr. James Bennett, Chief, Branch of Environmental Assessment, 381 Elden Street, Mail Stop 4042, Herndon, Virginia 20170, (703) 787–1660.

Dated: October 2, 2006.

Walter D. Cruickshank,

Acting Director, Minerals Management Service.

[FR Doc. E6–17243 Filed 10–16–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention to Request Clearance of Information Collection; Opportunity for Public Comment

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3507) and 5 CFR part 1320, Reporting and Recordkeeping requirements, the National Park Service (NPS) invites public comment on a revision of a currently approved collection of information (OMB #1024–0026).

DATES: Public Comments on this notice will be accepted until December 18, 2006.

ADDRESSES: Send comments to Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., (org. code 2465), Washington, DC 20240, e-mail at *Lee_Dickinson@nps.gov.* All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Lee Dickinson, Special Park Uses Program Manager, National Park Service, 1849 C Street, NW., (org. code 2465), Washington, DC 20240, by telephone at 202–513–7092, fax at 202–371–2401, or by e-mail at *Lee_Dickinson@nps.gov.* You are entitled to a copy of the entire ICR package free of charge.

SUPPLEMENTARY INFORMATION:

Title: Special Park Use Applications (Portions of 36 CFR 1–7, 13, 20, 34).

Form Numbers: 10–930, 10–931, 10–932.

OMB Number: 1024–0026.

Expiration Date: December 31, 2006.

Type of Request: Extension of a currently approved collection.

Description of Need: The NPS' legislative mandate is to preserve America's natural and cultural treasurers unimpaired for future generations, while also making them available for the enjoyment of the visitor (16 U.S.C. 1). NPS regulations, codified at title 36 Code of Federal Regulations (CFR), are promulgated to allow for the enjoyment and use of the resource by the public while protecting the resource. These forms are intended to gather sufficient information to enable park managers to approve or deny the requested uses of public lands authorized in 36 CFR and, if approved, to provide sufficient information to craft permit terms and conditions sufficient to protect park lands from impairment of the park resources, values and purposes for which the park was created. The uses considered under these information collection applications generally include those which regulate or limit those activities not available to the public at large, such as special events, commercial filming, and grazing in parks where such activity is authorized by law.

The NPS specially invites public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, whether the information will have practical utility.

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other forms of information technology.

Description of Respondents: Individuals, not-for-profit institutions, for profit businesses.

Estimated annual number of respondents: 18,600 annually.

Estimated annual burden on respondents: 11,150 hours.

Estimated average burden hours per response: 35 minutes.

Estimated frequency of response: 18,600 annually.

Dated: September 7, 2006.

Leonard E. Stowe,

NPS, Information and Collection Clearance Officer.

[FR Doc. 06–8724 Filed 10–16–06; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Existing Collection in Use Without OMB Control Number; Comments Requested

ACTION: 60-day notice of information collection under review: Firearms Inquiry Statistics (FIST) Program.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics (BJS), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 18, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Matthew Hickman, Bureau of Justice Statistics, 810 Seventh St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—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 agencies 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.

Overview of This Information Collection

(1) *Type of Information Collection:* Existing collection in use without OMB control number.

(2) *Title of the Form/Collection:* Firearms Inquiry Statistics (FIST) Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Not applicable.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Government. This information collection is a survey of State and local agencies that conduct background checks on individuals applying to purchase firearms from federally licensed firearm dealers. The information will provide national statistics on the total number of applications and rejections annually.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 683 respondents will complete a fifteen minute form twice annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 341.5 total annual burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building,

Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 12, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. E6–17248 Filed 10–16–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0094]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Extension of a previously approved collection: The Annual Survey of Jails.

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collected is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 18, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Todd D. Minton, Statistician (202) 305–9630, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) 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;

(2) 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;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) 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.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the Form/Collection:* The Annual Survey of Jails (ASJ).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: CJ–5, CJ–5A, CJ–5B, and CJ–5B Addendum. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Primary: County and city jail authorities and tribal authorities. This form is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses. The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographics and supervision status of jail population and the prevalence of crowding.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: Nine hundred and forty-five respondents each taking an average 75 minutes to respond for collection forms CJ–5, CJ–5A, and CJ–5B. Sixty-eight respondents each taking an average of 30 minutes to respond for collection form CJ–5BAddendum.

(6) An estimate of the total public burden (in hours) associated with the collection: There are an estimated 1,215 annual total burden hours associated with the collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: October 12, 2006.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E6–17250 Filed 10–16–06; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

October 11, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, telephone: 202–395–7316/fax: 202–395–6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- 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: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: Telephone Point of Purchase Survey.
OMB Number: 1220–0044.
Type of Response: Reporting.
Frequency: Quarterly.
Affected Public: Individuals or households.
Estimated Number of Respondents: 19,374.
Annual Responses: 51,340.
Total Annual Burden Hours: 10,268.
Total Annualized capital/startup costs: $0.
Total Annual Costs (operating/maintaining systems or purchasing services): $0.
Description: The purpose of this collection is to develop and maintain a timely list of retail, wholesale, and service establishments at which people shop for specific consumer items. The information collected is used to select establishments for pricing market based items as needed for the Consumer Price Index.

Ira L. Mills,
Departmental Clearance Officer.
[FR Doc. E6–17230 Filed 10–16–06; 8:45 am]
BILLING CODE 4510–24–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 06–080]

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).
ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Mr. Walter Kit, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Mr. Walter Kit, NASA PRA Officer, NASA Headquarters, 300 E Street SW., JE000, Washington, DC 20546, (202) 358–1350, *Walter.Kit-1@nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The analysis of the Effective Messaging Research survey will position NASA to effectively communicate Agency messages.

II. Method of Collection

All survey responses will be collected by telephone and tabulated electronically.

III. Data

Title: Effective Messaging Research.
OMB Number: 2700–0113.
Type of review: Extension of currently approved collection.
Affected Public: Individuals and households, Business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.
Number of Respondents: 2700.
Responses Per Respondent: 1.
Annual Responses: 2700.
Hours Per Request: 0.33 hours.
Annual Burden Hours: 900.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Gary Cox,
Deputy Chief Information Officer (Acting).
[FR Doc. E6–17252 Filed 10–16–06; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–078)]

NASA Advisory Committee; Notice of Renewal

AGENCY: National Aeronautics and Space Administration (NASA).
ACTION: Notice of renewal of the Charter for the NASA Advisory Council.

SUMMARY: Pursuant to sections 14(b)(1)and 9(c) of the Federal Advisory Committee Act (Public Law 92–463), and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration (NASA) has determined that a renewal and amendment of the Charter for the Agency-established NASA Advisory Council is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. In connection with this renewal, several amendments have been made to the Charter as part of the overall restructuring of the NASA Advisory Council. The purpose of the NASA Advisory Council is to provide advice and make recommendations to the NASA Administrator on Agency programs, policies, plans, financial controls and other matters pertinent to the Agency's responsibilities.

FOR FURTHER INFORMATION CONTACT: Ms. P. Diane Rausch, Advisory Committee Management Officer, Office of External Relations, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–4510.

P. Diane Rausch,
Advisory Committee Management Officer, National Aeronautics and Space Administration.
[FR Doc. E6–17162 Filed 10–16–06; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

Time and Date: 10 a.m., Thursday, October 19, 2006.
Place: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.
Status: Open.
Matters to be Considered:
1. Quarterly Insurance Fund Report.
2. Interim Final Rule: Part 701 of NCUA's Rules and Regulations, General Lending Maturity and Other Financial Services.
3. Final Rule: Section 748.1(c) of NCUA's Rules and Regulations, Suspicious Activity Reports.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, telephone: 703–518–6304.

Mary Rupp,
Secretary of the Board.
[FR Doc. 06–8739 Filed 10–12–06; 5:02 pm]
BILLING CODE 7535–01–M

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Business and Operations Advisory Committee (9556).

Date/Time: November 8, 2006; 1 p.m. to 5:45 p.m. (est). November 9, 2006; 8 a.m. to 12:30 p.m. (est).

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1235.

Type of Meeting: Open.

Contact Person: Joan Miller, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 (703) 292–8200.

Purpose of Meeting: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

Agenda:

November 8, 2006

PM: Welcome; Updates—Office of Budget, Finance, and Award Management, Office of Information and Resource Management, Chief Information Officer activities. Presentation and Discussion—New Framework for Strategic Goal Assessment; Committee Discussion; Meeting with NSF Director/Deputy Director; Committee Discussion.

November 9, 2006

AM: Presentation and Discussion—Grants Management Line of Business (GMLoB) and Grants.gov Update; Information and Resource Management Discussion; Committee Discussion/Wrap-Up.

Dated: October 12, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–8720 Filed 10–16–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Cyberinfrastructure; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Cyberinfrastructure—(25150).

Date and Time: October 31, 2006, 10 a.m.–5 p.m. November 1, 2006, 8 a.m.–2 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA 22230

Type of Meeting: Open.

Contact Person: Judy Hayden, Office of the Director, Office of Cyberinfrastructure (CI), National Science Foundation, 4201 Wilson Blvd., Suite 1145, Arlington, VA 22230. Telephone: (703) 292–8970.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: Retreat of the Board to brainstorm strategy direction. To advise NSF on the impact of its policies, programs and activities on the CI community. To provide advice to the Director/NSF on issues related to long-range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Report from the Director. Discussion of research initiatives, education, diversity, workforce issues in CI and long-range funding outlook.

Dated: October 12, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–8722 Filed 10–16–06; 8:45 am]

BILLING CODE 9555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Engineering (1170).

Date/Time: November 16, 2006; 8 a.m.–5 p.m. November 17, 2006; 8 a.m.–12 p.m.

Place: National Science Foundation, Room 1235.

Type of Meeting: Open Session.

Contact Person: Deborah Young, Administrative Officer, Office of the Assistant Director for Engineering, 703–292–8301.

Purpose of Meeting: To provide advice, recommendations and counsel on major goals and policies pertaining to engineering programs and activities.

Agenda: Major topics will include:

Overview and Discussion of Engineering Themes

—Biology in Engineering.
—Complexity in Engineered and Natural Systems.
—Critical Infrastructure Systems.
—Manufacturing Frontiers.
—New Frontiers in Nanotechnology.

Update on Cyberinfrastructure and Simulation-Based Engineering Science.

K–12 Subcommittee.

Industry Partnerships Subcommittee.

Diversity.

Dated: October 12, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–8719 Filed 10–16–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Materials Research (DMR) #1203.

Dates & Times: November 2, 2006; 7:45 a.m.–9:30 p.m. November 3, 2006; 8 a.m.–4 p.m.

Place: University of Minnesota, Minneapolis, MN.

Type of Meeting: Part—Open.

Contact Person: Dr. Maija M. Kukla, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–4940.

Purpose of Meeting: To provide advice and recommendations concerning further support of the Materials Research Science and Engineering Center.

Agenda:

Thursday, November 2, 2006

7:45 a.m.–8:45 a.m. Closed—Briefing of Site Visit Panel and Continental Breakfast.
8:45 a.m.–12:15 p.m. Open—Welcome (institutional representatives, etc.).
12:15 p.m.–1:30 p.m. Closed—Lunch with students and postdocs.
1:30 p.m.–4:45 p.m. Open—Technical Presentation.
4:45 p.m.–5:45 p.m. Closed—Executive Session for Site Visit Team.
5:45 p.m.–7:30 p.m. Open—Site Visit Panel meets with MRSEC Director & Center Leaders.
7:30 p.m.–9:30 p.m. Closed—Dinner Meeting of Site Visit Panel.

Friday, November 3, 2006

8 a.m.–9 a.m. Closed—Executive session/ Continental Breakfast/Director's Response to Feedback.
9 a.m.–11:15 a.m. Open—Industrial Outreach and Other Collaborations.
11:15 a.m.–3:30 p.m. Closed—Executive Session of Site Visit Panel.
3:30 p.m.–4 p.m. Open—Debriefing with MRSEC Director and Center Leaders.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information, financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: October 12, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–8721 Filed 10–16–06; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–298]

Nebraska Public Power District; Cooper Nuclear Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), paragraph 50.54(o), and 10 CFR part 50, Appendix J, for Facility Operating License No. DPR–46, issued to Nebraska Public Power District (NPPD or the licensee) for operation of the Cooper Nuclear Station (CNS), located in Nemaha County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt NPPD from requirements to include main steam isolation valve (MSIV) leakage in (a) the overall integrated leakage rate test measurement required by section III.A of Appendix J, Option B, and (b) the sum of local leak rate test measurements required by section III.B of Appendix J, Option B.

The proposed action is in accordance with the licensee's application, dated March 15, 2006, for exemption from certain requirements of 10 CFR 50.54(o) as defined in 10 CFR part 50, Appendix J.

The Need for the Proposed Action

Paragraph 50.54(o) of 10 CFR part 50 requires that primary reactor containments for water cooled power reactors be subject to the requirements of Appendix J to 10 CFR part 50. Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment, and of systems and components which penetrate the containment. Option B, section III.A requires that the overall integrated leak rate not exceed the allowable leakage (La) with margin, as specified in the Technical Specifications (TSs). The overall integrated leak rate, as specified in the 10 CFR part 50, Appendix J definitions, includes the contribution from MSIV leakage. By letter dated March 15, 2006, the licensee has requested an exemption from Option B, section III.A, requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement. Option B, section III.B of 10 CFR part 50, Appendix J, requires that the sum of the leakage rates of Type B and Type C local leak rate tests be less than the performance criterion (La) with margin, as specified in the TSs. The licensee's letter also requests an exemption from this requirement, to permit exclusion of the MSIV contribution to the sum of the Type B and Type C tests.

The above-cited requirements of Appendix J require that MSIV leakage measurements be grouped with the leakage measurements of other containment penetrations when containment leakage tests are performed. These requirements are inconsistent with the design of the CNS and the analytical models used to calculate the radiological consequences of design-basis accidents. At CNS, and similar facilities, the leakage from primary containment penetrations, under accident conditions, is collected and treated by the secondary containment system, or would bypass the secondary containment. However, the leakage from the MSIVs is collected and treated via an Alternative Leakage Treatment (ALT) path having different mitigation characteristics. In performing accident analyses, it is appropriate to group various leakage effluents according to the treatment they receive before being released to the environment (i.e., bypass leakage is grouped, leakage into secondary containment is grouped, and ALT leakage is grouped), with specific limits for each group defined in the TSs. The proposed exemption would permit ALT path leakage to be independently grouped with its unique leakage limits.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the environmental impacts would not be significant. The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historical sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the Final Environmental Statement dated February 1973 for CNS.

Agencies and Persons Consulted

In accordance with its stated policy, on September 26, 2006, the NRC staff consulted with the Nebraska State official, Ms. Julia Schmitt the Nebraska Department of Public Service, regarding the environmental impact of the proposed action. The State official had no comments on the environmental impact of the proposed exemption.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee's letter dated March 15, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publically available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland, this 11th day of October 2006.

For the Nuclear Regulatory Commission.

Brian Benney,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–17245 Filed 10–16–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of October 16, 23, 30, November 6, 13, 20, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

WEEK OF OCTOBER 16, 2006

Monday, October 16, 2006

9:30 a.m. Briefing on Status of New Reactor Issues—Combined Operating Licenses (COLS) (morning session).

1:30 p.m. Briefing on Status on New Reactor Issues—Combined Operating Licenses (COLS) (afternoon session) (Public Meetings) (Contact: Dave Matthews, 301–415–1199).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov*.

Friday, October 20, 2006

2:30 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of October 23, 2006—Tentative

Tuesday, October 24, 2006

9:30 a.m. Briefing on Transshipment and Domestic Shipment Security of Radioactive Material Quantities of Concern (RAMQC) (Closed—Ex. 3) (morning session).

1:30 p.m. Briefing on Transshipment and Domestic Shipment Security of Radioactive Material Quantities of Concern (RAMQC) (Closed—Ex. 3 & 9) (afternoon session).

Wednesday, October 25, 2006

9:30 a.m. Briefing on Institutionalization and Integration of Agency Lessons Learned (Public Meeting) (Contact: John Lamb, 301–415–1727).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov*.

1:30 p.m. Briefing on Resolution of GSI–191, Assessment of Debris Accumulation on PWR Sump Performance (Public Meeting) (Contact: Michael L. Scott, 301–415–0565).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of October 30, 2006—Tentative

There are not meetings scheduled for the Week of October 30, 2006.

Week of November 8, 2006—Tentative

Wednesday, November 8, 2006

9:30 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Paul Rebstock, 301–415–3295).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Thursday, November 9, 2005

9:30 a.m. Briefing on Draft Final Rule—Part 52 (Early Site permits/Standard Design Certification/Combined Licenses) (Public Meeting) (Contact: Dave Matthews, 301–415–1199).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov*.

Week of November 13, 2006—Tentative

There are not meetings scheduled for the Week of November 13, 2006.

Week of November 20, 2006—Tentative

There are not meetings scheduled for the Week of November 20, 2006.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*.

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–2100, or by e-mail at *DLC@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: October 12, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–8740 Filed 10–13–06; 10:12 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Opportunity To Comment on Model Safety Evaluation on Technical Specification Improvement To Modify Requirements Regarding Control Room Envelope HabitabilityUsing the Consolidated Line Item Improvement Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for comment.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) and model application relating to the modification of technical specification (TS) requirements regarding the habitability of the control room envelope (CRE). The NRC staff has also prepared a model no-significant-hazards-consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to revise the CRE emergency ventilation system TS action and surveillance requirements for the CRE boundary, and to add a new TS administrative controls program, ''Control Room Envelope Habitability Program.'' Licensees of nuclear power reactors to which the models apply could then request amendments, confirming the applicability of the SE and NSHC determination to their reactors. The NRC staff is requesting comment on the model SE and model NSHC determination prior to announcing their availability for referencing in license amendment applications.

DATES: The comment period expires November 16, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission

is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Comments may be submitted either electronically or via U.S. mail. Submit written comments to Chief, Rulemaking, Directives, and Editing Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 11555 Rockville Pike (Room O–1F21), Rockville, Maryland. Comments may be submitted by electronic mail to *CLIIP@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: C. Craig Harbuck, Mail Stop: O–12H2, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–3140.

SUPPLEMENTARY INFORMATION:

Background

Regulatory Issue Summary 2000–06, ''Consolidated Line Item Improvement Process for Adopting Standard Technical Specification Changes for Power Reactors,'' was issued on March 20, 2000. The consolidated line item improvement process (CLIIP) is intended to improve the efficiency of NRC licensing processes by processing proposed changes to the standard technical specifications (STS) in a manner that supports subsequent license amendment applications. The CLIIP includes an opportunity for the public to comment on a proposed change to the STS after a preliminary assessment by the NRC staff and a finding that the change will likely be offered for adoption by licensees. This notice solicits comments on a proposed change to establish more effective and appropriate action, surveillance, and administrative TS requirements related to maintaining CRE habitability. The CLIIP directs the NRC staff to evaluate any comments received for a proposed change to the STS and to either reconsider the change or announce the availability of the change for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures.

This notice involves a change to establish more effective and appropriate action, surveillance, and administrative TS requirements related to ensuring CRE habitability. This change was proposed for incorporation into the STS by the owners groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–448, Revision 3 (Rev 3). TSTF–448, Rev 3, can be viewed on the NRC's Web page at *http://www.nrc.gov/reactors/operating/licensing/techspecs.html* .

Applicability

This proposal to modify TS to establish more effective and appropriate action, surveillance, and administrative requirements related to maintaining CRE habitability, as proposed in TSTF–448, Rev 3, is applicable to all licensees.

To efficiently process the incoming license amendment applications, the staff requests that each licensee applying for the changes proposed in TSTF–448, Rev 3, use the CLIIP. The CLIIP does not prevent licensees from requesting an alternative approach or proposing the changes without the requested TS bases and TS bases control program. Variations from the approach recommended in this notice may require additional review by the NRC staff, and may increase the time and resources needed for the review. Significant variations from the approach, or inclusion of additional changes to the license, will result in staff rejection of the submittal. Instead, licensees desiring significant variations and/or additional changes should submit a license amendment request (LAR) that does not claim to adopt TSTF–448, Rev 3.

Public Notices

This notice requests comments from interested members of the public within 30 days of the date of publication in the **Federal Register**. After evaluating the comments received as a result of this notice, the staff will either reconsider the proposed change or announce the availability of the change in a subsequent notice (perhaps with some changes to the safety evaluation or the proposed no significant hazards consideration determination as a result of public comments). If the staff announces the availability of the change, licensees wishing to adopt the change must submit an application in accordance with applicable rules and other regulatory requirements. For each application the staff will publish a notice of consideration of issuance of amendment to facility operating licenses, a proposed no significant hazards consideration determination, and a notice of opportunity for a hearing. The staff will also publish a notice of issuance of an amendment to an operating license to announce the modification of TS requirements related to CRE habitability, for each plant that receives the requested change.

Dated at Rockville, Maryland, this 4th day of October, 2006.

For the Nuclear Regulatory Commission.

Timothy J. Kobetz,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

Model Safety Evaluation

U.S. Nuclear Regulatory Commission; Office of Nuclear Reactor Regulation; Consolidated Line Item Improvement; Adoption of Changes to Standard Technical Specifications; Under Technical Specifications Task Force (TSTF) Change Number TSTF–448, Revision 3; Regarding Control Room Envelope Habitability

1.0 Introduction

By application dated [ ] [as supplemented by letters dated[and]], [Name of Licensee] (the licensee) requested changes to the Technical Specifications (TS) for the [Name of Facility]. [The supplements dated [and], provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on [Date (PM/LA will fill in FR information)] (XX FR XXXX).]

On August 8, 2006, the commercial nuclear electrical power generation industry owners group Technical Specifications Task Force (TSTF) submitted a proposed change, TSTF–448, Revision 3, to the improved standard technical specifications (STS) (NUREGs 1430–1434) on behalf of the industry (TSTF–448, Revisions 0, 1, and 2 were prior draft iterations). TSTF–448, Revision 3, is a proposal to establish more effective and appropriate action, surveillance, and administrative STS requirements related to ensuring the habitability of the control room envelope (CRE).

In United States Nuclear Regulatory Commission (NRC) Generic Letter 2003–01 (Reference 1), licensees were alerted to findings at facilities that existing TS surveillance requirements for the [Control Room Envelope Emergency Ventilation System (CREEVS)] may not

be adequate. Specifically, the results of ASTM E741 (Reference 2) tracer gas tests to measure control room envelope (CRE) unfiltered inleakage at facilities indicated that the differential pressure surveillance is not a reliable method for demonstrating CRE boundary operability. Licensees were requested to address existing TS as follows:

Provide confirmation that your technical specifications verify the integrity [i.e., operability] of the CRE [boundary], and the assumed [unfiltered] inleakage rates of potentially contaminated air. If you currently have a differential pressure surveillance requirement to demonstrate CRE [boundary] integrity, provide the basis for your conclusion that it remains adequate to demonstrate CRE integrity in light of the ASTM E741 testing results. If you conclude that your differential pressure surveillance requirement is no longer adequate, provide a schedule for: 1) revising the surveillance requirement in your technical specification to reference an acceptable surveillance methodology (e.g., ASTM E741), and 2) making any necessary modifications to your CRE [boundary] so that compliance with your new surveillance requirement can be demonstrated.

If your facility does not currently have a technical specification surveillance requirement for your CRE integrity, explain how and at what frequency you confirm your CRE integrity and why this is adequate to demonstrate CRE integrity.

To promote standardization and to minimize the resources that would be needed to create and process plant-specific amendment applications in response to the concerns described in the generic letter, the industry and the NRC proposed revisions to CRE habitability system requirements contained in the STS, using the STS change traveler process. This effort culminated in Revision 3 to traveler TSTF–448, ''Control Room Habitability,'' which the NRC staff approved on [month dd, 2006].

Consistent with the traveler as incorporated into NUREG–143xx, the licensee proposed revising action and surveillance requirements in [Specification 3.7.10, ''Control Room Envelope Emergency Ventilation System (CREEVS),''] and adding a new administrative controls program, [Specification 5.5.18, ''CRE Habitability Program.''] The purpose of the changes is to ensure that CRE boundary operability is maintained and verified through effective surveillance and programmatic requirements, and that appropriate remedial actions are taken in the event of an inoperable CRE boundary.

2.0 Regulatory Evaluation

2.1 Control Room and Control Room Envelope

NRC Regulatory Guide 1.196, ''Control Room Habitability at Light-water Nuclear Power Reactors,'' Revision 0, May 2003, (Reference 4) uses the term ''control room envelope (CRE)'' in addition to the term ''control room'' and defines each term as follows:

Control Room: The plant area, defined in the facility licensing basis, in which actions can be taken to operate the plant safely under normal conditions and to maintain the reactor in a safe condition during accident situations. It encompasses the instrumentation and controls necessary for a safe shutdown of the plant and typically includes the critical document reference file, computer room (if used as an integral part of the emergency response plan), shift supervisor's office, operator wash room and kitchen, and other critical areas to which frequent personnel access or continuous occupancy may be necessary in the event of an accident.

Control Room Envelope: The plant area, defined in the facility licensing basis, that in the event of an emergency, can be isolated from the plant areas and the environment external to the CRE. This area is served by an emergency ventilation system, with the intent of maintaining the habitability of the control room. This area encompasses the control room, and may encompass other non-critical areas to which frequent personnel access or continuous occupancy is not necessary in the event of an accident.

NRC Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity At Nuclear Power Reactors,'' Revision 0, May 2003 (Reference 5), also contains these definitions, but uses the term CRE to mean both. This is because the protected environment provided for operators varies with the nuclear power facility. At some facilities, this environment is limited to the control room; at others, it is the CRE. In this safety evaluation, consistent with the proposed changes to the STS, the CRE will be used to designate both. For consistency, facilities should use the term CRE with an appropriate facility-specific definition derived from the above CRE definition.

2.2 [Control Room Envelope Emergency Ventilation System (CREEVS)]

The [CREEVS] provides a protected environment from which operators can control the unit, during airborne challenges from radioactivity, hazardous chemicals, and fire byproducts, such as fire suppression agents and smoke, during both normal and accident conditions.

The [CREEVS] is designed to maintain a habitable environment in the control room envelope for 30 days of continuous occupancy after a Design Basis Accident (DBA) without exceeding a [5 rem whole body dose or its equivalent to any part of the body] [5 rem total effective dose equivalent (TEDE)].

The [CREEVS] consists of two redundant trains [subsystems], each capable of maintaining the habitability of the CRE. The [CREEVS] is considered operable when the individual components necessary to limit operator exposure are operable in both trains [subsystems]. A [CREEVS] train [subsystem] is considered operable when the associated:

- Fan is operable;
- High efficiency particulate air (HEPA) filters and charcoal adsorbers are not excessively restricting flow, and are capable of performing their filtration functions;
- Heater, demister, ductwork, valves, and dampers are operable, and air circulation can be maintained; and
- CRE boundary is operable (the single boundary supports both trains [subsystems]).

The CRE boundary is considered operable when the measured unfiltered air inleakage is less than or equal to the inleakage value assumed by the licensing basis analyses of design basis accident consequences to CRE occupants.

2.3 Regulations Applicable to Control Room Habitability

In Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' General Design Criteria (GDC) 1, 2, 3, 4, 5, and 19 apply to CRE habitability. A summary of these GDCs follows.

GDC 1, ''Quality Standards and Records,'' requires that structures, systems, and components (SSCs) important to safety be designed, fabricated, erected, and tested to quality standards commensurate with the importance of the safety functions performed.

GDC 2, ''Design Basis for Protection Against Natural Phenomena,'' requires that structures, systems, and components (SSCs) important to safety be designed to withstand the effects of earthquakes and other natural hazards.

GDC 3, ''Fire Protection,'' requires SSCs important to safety be designed and located to minimize the effects of fires and explosions.

GDC 4, ''Environmental and Dynamic Effects Design Bases,'' requires SSCs important to safety to be designed to accommodate the effects of and to be compatible with the environmental

conditions associated with normal operation, maintenance, testing, and postulated accidents, including loss-of-coolant accidents (LOCAs).

GDC 5, ''Sharing of Structures, Systems, and Components,'' requires that SSCs important to safety not be shared among nuclear power units unless it can be shown that such sharing will not significantly impair their ability to perform their safety functions, including, in the event of an accident in one unit, the orderly shutdown and cooldown of the remaining units.

GDC 19, ''Control Room,'' requires that a control room be provided from which actions can be taken to operate the nuclear reactor safely under normal conditions and to maintain the reactor in a safe condition under accident conditions, including a LOCA. Adequate radiation protection is to be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of specified values.

Prior to incorporation of TSTF–448, Revision 3, the STS requirements addressing control room habitability resided only in the following CRE ventilation system specifications:

- NUREG–1430, TS 3.7.10, ''Control Room Emergency Ventilation System (CREVS);''
- NUREG–1431, TS 3.7.10, ''Control Room Emergency Filtration System (CREFS);''
- NUREG–1432, TS 3.7.11, ''Control Room Emergency Air Cleanup System (CREACS);''
- REG–1433, TS 3.7.4, ''[Main Control Room Environmental Control (MCREC)] System;'' and
- NUREG–1434, TS 3.7.3, ''[Control Room Fresh Air (CRFA)] System.''

In these specifications, the surveillance requirement associated with demonstrating the operability of the CRE boundary requires verifying that one [CREEVS] train [subsystem] can maintain a positive pressure of [0.125] inches water gauge, relative to the adjacent [turbine building] during the pressurization mode of operation at a makeup flow rate of [3000] cfm. Facilities that pressurize the CRE during the emergency mode of operation of the [CREEVS] have similar surveillance requirements. Other facilities that do not pressurize the CRE have only a system flow rate criterion for the emergency mode of operation. Regardless, the results of ASTM E741 (Reference 2) tracer gas tests to measure CRE unfiltered inleakage at facilities indicated that the differential pressure surveillance (or the alternative surveillance at non-pressurization facilities) is not a reliable method for demonstrating CRE boundary operability. That is, licensees were able to obtain differential pressure and flow measurements satisfying the SR limits even though unfiltered inleakage was determined to exceed the value assumed in the safety analyses.

In addition to an inadequate surveillance requirement, the action requirements of these specifications were ambiguous regarding CRE boundary operability in the event CRE unfiltered inleakage is found to exceed the analysis assumption. The ambiguity stemmed from the view that the CRE boundary may be considered operable but degraded in this condition, and that it would be deemed inoperable only if calculated radiological exposure limits for CRE occupants exceeded a licensing basis limit; e.g., as stated in GDC–19, even while crediting compensatory measures.

NRC Administrative Letter 98–10, ''Dispositioning of Technical Specifications That Are Insufficient to Assure Plant Safety,'' (AL 98–10) states that '' the discovery of an improper or inadequate TS value or required action is considered a degraded or nonconforming condition,'' which is defined in [NRC Inspection Manual Chapter 9900; see latest guidance in RIS 2005–20 (Reference 3)]. ''Imposing administrative controls in response to an improper or inadequate TS is considered an acceptable short-term corrective action. The [NRC] staff expects that, following the imposition of administrative controls, an amendment to the [inadequate] TS, with appropriate justification and schedule, will be submitted in a timely fashion.''

Licensees that have found unfiltered inleakage in excess of the limit assumed in the safety analyses and have yet to either reduce the inleakage below the limit or establish a higher bounding limit through re-analysis, have implemented compensatory actions to ensure the safety of CRE occupants, pending final resolution of the condition, consistent with RIS 2005–20. However, based on GL 2003–01 and AL 98–10, the staff expects each licensee to propose TS changes that include a surveillance to periodically measure CRE unfiltered inleakage in order to satisfy 10 CFR 50.36(c)(3), which requires a facility's TS to include surveillance requirements, which it defines as ''requirements relating to test, calibration, or inspection to assure that the necessary quality of systems and components is maintained, that facility operation will be within safety limits, and that limiting conditions for operation will be met.'' (Emphasis added.)

The NRC staff also expects facilities to propose unambiguous remedial actions, consistent with 10 CFR 50.36(c)(2), for the condition of not meeting the limiting condition for operation (LCO) due to an inoperable CRE boundary. The action requirements should specify a reasonable completion time to restore conformance to the LCO before requiring a facility to be shut down. This completion time should be based on the benefits of implementing mitigating actions to ensure CRE occupant safety and sufficient time to resolve most problems anticipated with the CRE boundary, while minimizing the chance that operators in the CRE will need to use mitigating actions during accident conditions.

2.4 Adoption of TSTF–448, Revision 3, by [Facility Name]

Adoption of TSTF–448, Revision 3, will assure that the facility's TS LCO for the [CREEVS] is met by demonstrating unfiltered leakage into the CRE is within limits; i.e., the operability of the CRE boundary. In support of this surveillance, which specifies a relatively long test interval (frequency) of 6 years, TSTF–448 also adds TS administrative controls to assure the habitability of the CRE between performances of the ASTM E741 test. In addition, adoption of TSTF–448 will establish clearly stated and reasonable required actions in the event CRE unfiltered inleakage is found to exceed the analysis assumption.

The changes made by TSTF–448 to the STS requirements for the [CREEVS] and the CRE boundary conform to 10 CFR 50.36(c)(2) and 10 CFR 50.36(c)(3). Their adoption will better assure that [facility name]'s CRE will remain habitable during normal operation and design basis accident conditions. These changes are, therefore, acceptable from a regulatory standpoint.

3.0 Technical Evaluation

The NRC staff reviewed the proposed changes against the corresponding changes made to the STS by TSTF–448, Revision 3, which the NRC staff has found to satisfy applicable regulatory requirements, as described above in Section 2.0. [The emergency operational mode of the [CREEVS] at [facility name] [pressurizes] [isolates but does not pressurize] the CRE to minimize unfiltered air inleakage.] The proposed changes are consistent with this design.

3.1 Proposed Changes

The proposed amendment would strengthen CRE habitability TS

requirements by changing TS [3.7.10, CREEVS] and adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS changes are appropriate conforming technical changes to the TS Bases.

The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. [Except for plant specific differences, all of] these changes are consistent with STS as revised by TSTF–448, Revision 3.

The NRC staff compared the proposed TS changes to the STS and the STS markups and evaluations in TSTF–448. [The staff verified that differences from the STS were adequately justified on the basis of plant-specific design or retention of current licensing basis.] The NRC staff also reviewed the proposed changes to the TS Bases for consistency with the STS Bases and the plant-specific design and licensing bases, although approval of the Bases is not a condition for accepting the proposed amendment. However, TS 5.5.[11], ''TS Bases Control Program,'' provides assurance that the licensee has established and will maintain the adequacy of the Bases.

[The proposed Bases for TS 3.7.10 reference NEI 99–03, ''Control Room Habitability Assessment Guidance,'' Revision 1, dated March 2003, which the NRC staff has not formally endorsed. However, NEI 99–03, Revision 0 (Reference 6), dated June 2001, has been endorsed through Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' dated May 2003 (Reference 4). Listing Revision 1 instead of Revision 0 is acceptable because the NRC staff reviewed the descriptions and justifications of the differences between Revision 0 and Revision 1, provided in the licensee's application, and has determined that referencing Revision 1 does not conflict with the endorsement of Revision 0, as stated in RG 1.196.]

3.2 Editorial Changes

The licensee proposed editorial changes to TS [3.7.10, ''CREEVS,''] to establish standard terminology, such as ''control room envelope (CRE)'' in place of ''control room,'' except for the plant-specific name for the [CREEVS], and ''radiological, chemical, and smoke hazards (or challenges)'' in place of various phrases to describe the hazards that CRE occupants are protected from by the [CREEVS]. [The licensee also proposed to correct a typographical error by replacing ''irradiate'' with ''irradiated'' in TS 3.7.10 Condition E.] These changes improve the usability and quality of the presentation of the TS, have no impact on safety, and therefore, are acceptable.

3.3 TS [3.7.10, CREEVS]

<Evaluation 1—for facilities that have adopted the [CREEVS] TS LCO Note and Action B of TSTF–287, Rev. 5>

The licensee proposed to revise the action requirements of TS [3.7.10, ''CREEVS,''] to acknowledge that an inoperable CRE boundary, depending upon the location of the associated degradation, could cause just one, instead of both [CREEVS] [trains] to be inoperable. This is accomplished by revising Condition A to exclude Condition B, and revising Condition B to address one or more [CREEVS] [trains], as follows:

- Condition A One [CREEVS] [train] inoperable for reasons other than Condition B.
- Condition B One or more [CREEVS] [trains] inoperable due to inoperable CRE boundary in MODE 1, 2, [or] 3[, or 4].

This change clarifies how to apply the action requirements in the event just one [CREEVS] [train] is unable to ensure CRE occupant safety within licensing basis limits because of an inoperable CRE boundary. It enhances the usability of Conditions A and B with a presentation that is more consistent with the intent of the existing requirements. This change is an administrative change because it neither reduces nor increases the existing action requirements, and, therefore, is acceptable.

The licensee proposed to replace existing Required Action B.1, ''Restore control room boundary to OPERABLE status,'' which has a 24-hour Completion Time, with Required Action B.1, to immediately initiate action to implement mitigating actions; Required Action B.2, to verify, within 24 hours, that in the event of a DBA, CRE occupant radiological exposures will not exceed the calculated dose of the licensing basis analyses of DBA consequences, and that CRE occupants are protected from hazardous chemicals and smoke; and Required Action B.3, to restore CRE boundary to operable status within 90 days.

The 24-hour Completion Time of new Required Action B.2 is reasonable based on the low probability of a DBA occurring during this time period, and the use of mitigating actions as directed by Required Action B.1. The 90-day Completion Time of new Required Action B.3 is reasonable based on the determination that the mitigating actions will ensure protection of CRE occupants within analyzed limits while limiting the probability that CRE occupants will have to implement protective measures that may adversely affect their ability to control the reactor and maintain it in a safe shutdown condition in the event of a DBA. The 90-day Completion Time is a reasonable time to diagnose, plan and possibly repair, and test most anticipated problems with the CRE boundary. Therefore, proposed Action B is acceptable.

<End of Evaluation 1>

<Evaluation 2—for facilities that have not yet adopted the [CREEVS] TS LCO Note and Action B of TSTF–287, Rev. 5>

The licensee proposed to establish new action requirements in TS [3.7.10, ''CREEVS,''] for an inoperable CRE boundary. Currently, if one [CREEVS] [train] is determined to be inoperable due to an inoperable CRE boundary, existing Action A would apply and require restoring the [train] (and the CRE boundary) to operable status in 7 days. If two [trains] are determined to be inoperable due to an inoperable CRE boundary, existing Action [E] specifies no time to restore the [trains] (and the CRE boundary) to operable status, but requires immediate entry into the shutdown actions of LCO 3.0.3. These existing Actions are more restrictive than would be appropriate in situations for which CRE occupant implementation of compensatory measures or mitigating actions would temporarily afford adequate CRE occupant protection from postulated airborne hazards. To account for such situations, the licensee proposed to revise the action requirements to add a new Condition B, ''One or more [CREEVS] [trains] inoperable due to inoperable CRE boundary in MODE 1, 2, [or] 3[, or 4].'' New Action B would allow 90 days to restore the CRE boundary (and consequently, the affected [CREEVS] [trains]) to operable status, provided that mitigating actions are immediately implemented and within 24 hours are verified to ensure, that in the event of a DBA, CRE occupant radiological exposures will not exceed the calculated dose of the licensing basis analyses of DBA consequences, and that CRE occupants are protected from hazardous chemicals and smoke.

The 24-hour Completion Time of new Required Action B.2 is reasonable based on the low probability of a DBA occurring during this time period, and the use of mitigating actions. The 90-day Completion Time is reasonable based on the determination that the mitigating actions will ensure protection of CRE occupants within analyzed limits while limiting the probability that CRE occupants will have to implement protective measures that may adversely affect their ability to control the reactor and maintain it in a safe shutdown condition in the event of a DBA. The 90-day Completion Time of new Required Action B.3 is a reasonable time to diagnose, plan and possibly repair, and test most anticipated problems with the CRE boundary. Therefore, proposed Action B is acceptable.

To distinguish new Condition B from the existing condition for one [CREEVS] [train] inoperable, Condition A is revised to state, ''One [CREEVS] [train] inoperable for reasons other than Condition B.'' To distinguish new Condition B from the existing condition for two [CREEVS] [trains] inoperable, Condition [E] (renumbered as Condition [F]) is revised to state, ''Two [CREEVS] [trains] inoperable during MODE 1, 2, [or] 3[, or 4] for reasons other than Condition B.'' The changes to existing Conditions A and [E] are less restrictive because these Conditions will no longer apply in the event one or two [CREEVS] [trains] are inoperable due to an inoperable CRE boundary during unit operation in Mode 1, 2, [or] 3[, or 4]. This is acceptable because the new Action B establishes adequate remedial measures in this condition. With the addition of a new Condition B, existing Conditions B, C, D, and E are re-designated C, D, E, and F, respectively.

The licensee also proposed to modify the [CREEVS] LCO by adding a note allowing the CRE boundary to be opened intermittently under administrative controls. As stated in the LCO Bases, this Note ''only applies to openings in the CRE boundary that can be rapidly restored to the design condition, such as doors, hatches, floor plugs, and access panels. For entry and exit through doors, the administrative control of the opening is performed by the person(s) entering or exiting the area. For other openings, these controls should be proceduralized and consist of stationing a dedicated individual at the opening who is in continuous communication with operators in the CRE. This individual will have a method to rapidly close the opening and to restore the CRE boundary to a condition equivalent to the design condition when a need for CRE isolation is indicated.'' The allowance of this note is acceptable because the administrative controls will ensure that the opening will be quickly sealed to maintain the validity of the licensing basis analyses of DBA consequences.

<End of Evaluation 2>

<Evaluation 3—for B&W CREVS TS>

The existing TS 3.7.10 condition for two control room emergency ventilation system (CREVS) trains inoperable during refueling, Condition E, is revised to also apply during plant operation in Modes 5 and 6. It will state, ''Two CREVS trains inoperable [in MODE 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' This change clarifies the applicability of this condition for dual unit facilities when the unit is in Mode 5 or 6, and the other unit is moving [recently] irradiated fuel assemblies. Similarly, Condition D, for failing to meet Action A during movement of [recently] irradiated fuel assemblies, is revised to also apply in Modes 5 and 6. These changes are administrative because they only clarify the intended applicability of the existing conditions, and are, therefore, acceptable. Required Actions D.2 and E.1, to immediately suspend movement of [recently] irradiated fuel assemblies, ensures that a fuel handling accident cannot occur while the unit is in these conditions. With only one CREVS train inoperable, Required Action D.1 specifies an alternative to immediately suspending fuel movement; it requires immediately placing the operable CREVS train in its emergency operating alignment, or mode, to minimize the chance the train will fail to properly switch to this mode if called upon in response to a fuel handling accident, or other airborne hazards challenge.

<End of Evaluation 3>

<Evaluation 4—for B&W, CE, and W [CREEVS] TS>

The licensee proposed to add a new condition to Action E of TS 3.7.10 that states, ''One or more [CREEVS] trains inoperable due to an inoperable CRE boundary [in Mode 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' The specified Required Action proposed for this condition is the same as for the existing condition of Action E [(revised as discussed previously) <for B&W plants if Evaluation 3 is used>], which states ''[Two [CREEVS] trains inoperable [in MODE 5 or 6, or] during movement of [recently] irradiated fuel assemblies.'' Accordingly, the new condition is stated with the other condition in Action E using the logical connector ''*OR*'' in accordance with the STS writer's guide (TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Technical Specifications,'' June 2005). The practical result of this presentation in format is the same as specifying two separately numbered Actions, one for each condition. Its advantage is to make the TS Actions table easier to use by avoiding having an additional numbered row in the Actions table. The new condition in Action E is needed because proposed Action B will only apply in Modes 1, 2, 3, and 4. As such, this change will ensure that the Actions table continues to specify a condition for an inoperable CRE boundary during Modes 5 and 6 and during refueling. Therefore, this change is administrative and acceptable.

<End of Evaluation 4>

<Evaluation 5—for BWR4 and BWR6 [CREEVS] TS>

The licensee proposed to add a new condition to Action F of TS 3.7.4 that states, ''One or more [CREEVS] subsystems inoperable due to an inoperable CRE boundary during movement of [recently] irradiated fuel assemblies in the [[primary or] secondary] containment or during operations with a potential for draining the reactor vessel (OPDRVs).'' The specified Required Actions proposed for this condition are the same as for the other existing condition for Action F, which states, ''Two [CREEVS] subsystems inoperable during movement of [recently] irradiated fuel assemblies in the [secondary] containment or during OPDRVs.'' Accordingly, the new condition is stated with the other condition in Action F using the logical connector ''*OR*'' in accordance with the STS writer's guide (TSTF–GG–05–01, ''Writer's Guide for Plant-Specific Improved Technical Specifications,'' June 2005). The practical result of this presentation in format is the same as specifying two separately numbered Actions, one for each condition. Its advantage is to make the TS Actions table easier to use by avoiding having an additional numbered row in the Actions table. This new actions condition is needed because proposed Action B will only apply in Modes 1, 2, 3, and 4. As such, this change will ensure that the Actions table continues to specify a condition for an inoperable CRE boundary during refueling and OPDRVs. Therefore, this change is administrative and acceptable.

<End of Evaluation 5>

<Evaluation 6—for facilities that have a CRE pressurization surveillance requirement>

In the [emergency radiation state] of operation, the [CREEVS] isolates unfiltered ventilation air supply intakes, filters the emergency ventilation air supply to the CRE, and pressurizes the CRE to minimize unfiltered air inleakage past the CRE boundary. The licensee proposed to delete the CRE pressurization surveillance requirement (SR). This SR requires verifying that one [CREEVS] [train][subsystem], operating in the [emergency radiation state], can maintain a pressure of [0.125] inches water gauge, relative to the adjacent [turbine building] during the pressurization mode of operation at a makeup flow rate of [3000] cfm. The deletion of this SR is proposed because measurements of unfiltered air leakage into the CRE at numerous reactor facilities demonstrated that a basic assumption of this SR, an essentially leak-tight CRE boundary, was incorrect for most facilities. Hence, meeting this SR by achieving the required CRE pressure is not necessarily a conclusive indication of CRE boundary leak tightness, i.e., CRE boundary operability. In its response to GL 2003–01, [dated month, dd, yyyy], the licensee reported that it had determined that the [facility name] CRE pressurization surveillance, SR 3.7.[10].[4], was inadequate to demonstrate the operability of the CRE boundary, and proposed to replace it with an inleakage measurement SR and a CRE Habitability Program in TS Section 5.5, in accordance with the approved version of TSTF–448. Based on the adoption of TSTF–448, Revision 3, the licensee's proposal to delete SR 3.7.[10].[4] is acceptable.

<End of Evaluation 6>

The proposed CRE inleakage measurement SR states, ''Perform required CRE unfiltered air inleakage testing in accordance with the Control Room Envelope Habitability Program.'' The CRE Habitability Program TS, proposed TS 5.5.[18], requires that the program include ''Requirements for determining the unfiltered air inleakage past the CRE boundary into the CRE in accordance with the testing methods and at the Frequencies specified in Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0 (Reference 5). This guidance references ASTM E741 (Reference 2) as an acceptable method for ascertaining the unfiltered leakage into the CRE. The licensee has [,however, not] proposed to follow this method. [The NRC staff reviewed the licensee's proposed alternative method for measuring CRE inleakage to ensure it meets the criteria for such methods given in RG 1.197.] [Insert plant-specific technical evaluation by the staff of the alternative method.] [The NRC staff finds that the proposed alternative method is adequate for satisfying the criteria of RG 1.197.] Therefore, the proposed CRE inleakage measurement SR is acceptable.

3.4 TS 5.5.[18], CRE Habitability Program

The proposed administrative controls program TS is consistent with the model program TS in TSTF–448, Revision 3. In combination with SR 3.7.[10].[4], this program is intended to ensure the operability of the CRE boundary, which as part of an operable [CREEVS] will ensure that CRE habitability is maintained such that CRE occupants can control the reactor safely under normal conditions and maintain it in a safe condition following a radiological event, hazardous chemical release, or a smoke challenge. The program shall ensure that adequate radiation protection is provided to permit access and occupancy of the CRE under design basis accident (DBA) conditions without personnel receiving radiation exposures in excess of [5 rem whole body or its equivalent to any part of the body] [5 rem total effective dose equivalent (TEDE)] for the duration of the accident.

A CRE Habitability Program TS acceptable to the NRC staff requires the program to contain the following elements:

Definitions of CRE and CRE boundary. This element is intended to ensure that these definitions accurately describe the plant areas that are within the CRE, and also the interfaces that form the CRE boundary, and are consistent with the general definitions discussed in Section 2.1 of this safety evaluation. Establishing what is meant by the CRE and the CRE boundary will preclude ambiguity in the implementation of the program.

Configuration control and preventive maintenance of the CRE boundary. This element is intended to ensure the CRE boundary is maintained in its design condition. Guidance for implementing this element is contained in NEI 99–03 (Reference 6) and Regulatory Guide 1.196 (Reference 4). Maintaining the CRE boundary in its design condition provides assurance that its leak-tightness will not significantly degrade between CRE inleakage determinations.

Assessment of CRE habitability at the frequencies stated in Sections C.1 and C.2 of Regulatory Guide 1.197, Revision 0 (Reference 5), and measurement of unfiltered air leakage into the CRE in accordance with the testing methods and at the frequencies stated in Sections C.1 and C.2 of Regulatory Guide 1.197. [The licensee proposed the following exception[s] to Sections C.1 and C.2 of Regulatory Guide 1.197, to be listed in the TS with this program element.] [Insert plant-specific evaluation of licensee's proposed exceptions.] This element is intended to ensure that the plant assesses CRE habitability consistent with Sections C.1 and C.2 of Regulatory Guide 1.197 [and NRC approved exceptions]. Assessing CRE habitability at the NRC accepted frequencies provides assurance that significant degradation of the CRE boundary will not go undetected between CRE inleakage determinations. Determination of CRE inleakage using test methods acceptable to the NRC staff assures that test results are reliable for ascertaining CRE boundary operability. Determination of CRE inleakage at the NRC accepted frequencies provides assurance that significant degradation of the CRE boundary will not occur between CRE inleakage determinations.

Measurement of CRE pressure with respect to all areas adjacent to the CRE boundary at designated locations for use in assessing the CRE boundary at a frequency of [18] months on a staggered test basis (with respect to the [CREEVS] trains). This element is intended to ensure that CRE differential pressure is regularly measured to identify changes in pressure warranting evaluation of the condition of the CRE boundary. Obtaining and trending pressure data provides additional assurance that significant degradation of the CRE boundary will not go undetected between CRE inleakage determinations.

Quantitative limits on unfiltered inleakage. This element is intended to establish the CRE inleakage limit as the CRE unfiltered infiltration rate assumed in the CRE occupant radiological consequence analyses of design basis accidents. Having an unambiguous criterion for the CRE boundary to be considered operable in order to meet LCO 3.7.[10], will ensure that associated action requirements will be consistently applied in the event of CRE degradation resulting in inleakage exceeding the limit.

Consistent with TSTF–448, Revision 3, the program states that the provisions of SR 3.0.2 are applicable to the program frequencies for performing the activities required by program paragraph number c, parts (i) and (ii) (assessment of CRE habitability and measurement of CRE inleakage), and paragraph number d (measurement of CRE differential

pressure). This statement is needed to avoid confusion. SR 3.0.2 is applicable to the surveillance that references the testing in the CRE Habitability Program. However, SR 3.0.2 is not applicable to Administrative Controls unless specifically invoked. Providing this statement in the program eliminates any confusion regarding whether SR 3.0.2 is applicable, and is acceptable.

Consistent with TSTF–448, Revision 3, proposed TS 5.5.[18] states that (1) a CRE Habitability Program shall be established and implemented, (2) the program shall include all of the NRC-staff required elements, as described above, and (3) the provisions of SR 3.0.2 shall apply to program frequencies. Therefore, TS 5.5.[18], which is consistent with the model program TS approved by the NRC staff in TSTF–448, Revision 3, is acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no-significant-hazards considerations, and there has been no public comment on the finding [xx FR xxxx]. Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9) [and (c)(10)]. Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. NRC Generic Letter 2003–01, ''Control Room Habitability,'' dated June 12, 2003, (GL 2003–01).

2. ASTM E 741–00, ''Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution,'' 2000, (ASTM E741).

3. NRC Regulatory Issue Summary 2005–20: Revision to Guidance Formerly Contained in NRC Generic Letter 91–18,'' Information to Licensees Regarding Two NRC Inspection Manual Sections on Resolution of Degraded and Nonconforming Conditions and on Operability,'' dated September 26, 2005 (RIS 2005–20).

4. Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' dated May 2003.

5. Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003.

6. NEI 99–03, Revision 0, ''Control Room Habitability Assessment Guidance'' datedJune 2001.

Principal contributors: C. Harbuck.

Proposed No-Significant-Hazards-Consideration Determination

Description of Amendment Request: A change is proposed to the standard technical specifications (STS) (NUREGs 1430 through 1434) and plant specific technical specifications (TS), to strengthen TS requirements regarding control room envelope (CRE) habitability by changing the action and surveillance requirements associated with the limiting condition for operation operability requirements for the CRE emergency ventilation system, and by adding a new TS administrative controls program on CRE habitability. Accompanying the proposed TS change are appropriate conforming technical changes to the TS Bases. The proposed revision to the Bases also includes editorial and administrative changes to reflect applicable changes to the corresponding STS Bases, which were made to improve clarity, conform with the latest information and references, correct factual errors, and achieve more consistency among the STS NUREGs. The proposed revision to the TS and associated Bases is consistent with STS as revised by TSTF–448, Revision 3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in theProbability or Consequences of an Accident Previously Evaluated

The proposed change does not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. The proposed change does not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed change revises the TS for the CRE emergency ventilation system, which is a mitigation system designed to minimize unfiltered air leakage into the CRE and to filter the CRE atmosphere to protect the CRE occupants in the event of accidents previously analyzed. An important part of the CRE emergency ventilation system is the CRE boundary. The CRE emergency ventilation system is not an initiator or precursor to any accident previously evaluated. Therefore, the probability of any accident previously evaluated is not increased. Performing tests to verify the operability of the CRE boundary and implementing a program to assess and maintain CRE habitability ensure that the CRE emergency ventilation system is capable of adequately mitigating radiological consequences to CRE occupants during accident conditions, and that the CRE emergency ventilation system will perform as assumed in the consequence analyses of design basis accidents. Thus, the consequences of any accident previously evaluated are not increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not impact the accident analysis. The proposed change does not alter the required mitigation capability of the CRE emergency ventilation system, or its functioning during accident conditions as assumed in the licensing basis analyses of design basis accident radiological consequences to CRE occupants. No new or different accidents result from performing the new surveillance or following the new

program. The proposed change does not involve a physical alteration of the plant (i.e., no new or different type of equipment will be installed) or a significant change in the methods governing normal plant operation. The proposed change does not alter any safety analysis assumptions and is consistent with current plant operating practice. Therefore, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The proposed change does not affect safety analysis acceptance criteria. The proposed change will not result in plant operation in a configuration outside the design basis for an unacceptable period of time without compensatory measures. The proposed change does not adversely affect systems that respond to safely shut down the plant and to maintain the plant in a safe shutdown condition. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a no-significant-hazards consideration.

Dated at Rockville, Maryland, this 4 day of October, 2006.

For The Nuclear Regulatory Commission.

Timothy J. Kobetz, Branch Chief , Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

The Following Example Of An Application Was Prepared By The NRC Staff To Facilitate Use Of The Consolidated Line Item Improvement Process (Cliip). The Model Provides The Expected Level Of Detail And Content For An Application To Revise According To Tstf–448, Revision 3, Technical Specifications Regarding Control Room Envelope Habitability Using Cliip. Licensees Remain Responsible For Ensuring That Their Actual Application Fulfills Their Administrative Requirements As Well As Nuclear Regulatory Commission Regulations.

U.S. Nuclear Regular Commission
Document Control Desk
Washington, DC 20555

SUBJECT: PLANT NAME DOCKET NO. 50-APPLICATION TO REVISE TECHNICAL SPECIFICATIONS REGARDING CONTROL ROOM ENVELOPE HABITABILITY IN ACCORDANCE WITH TSTF–448, REVISION 3, USING THE CONSOLIDATED LINE ITEM IMPROVEMENT PROCESS

Gentlemen:

In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements related to control room envelope habitability in accordance with TSTF–448, Revision 3.

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare under penalty of perjury under the laws of the United States of America that I am authorized by [LICENSEE] to make this request and that the foregoing is true and correct. (Note that request may be notarized in lieu of using this oath or affirmation statement).

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,
[Name, Title]

Attachments: 1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases Changes

cc: NRC Project Manager
NRC Regional Office
NRC Resident Inspector
State Contact

Attachment 1—Description and Assessment

1.0 Description

The proposed amendment would modify technical specification (TS) requirements related to control room envelope habitability in TS 3.7.[10], [Control Room Envelope Emergency Ventilation System (CREEVS)] and TS Section 5.5, ''Administrative Controls—Programs.''

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–448 Revision 3. The availability of this TS improvement was published in the **Federal Register** on [DATE] as part of the consolidated line item improvement process (CLIIP).

2.0 Assessment

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE] as part of the CLIIP. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–448. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in the TSTF–448, Revision 3, or the NRC staff's model safety evaluation dated [DATE].

[Note: The Applicant should choose one of the following.]

[LICENSEE] proposes to reference NEI 99–03, Revision 0, dated June 2001, in the TS bases for TS 3.7.[10], instead of Revision 1, dated March 2003, because the NRC has not formally endorsed Revision 1.

[LICENSEE] proposes to reference NEI 99–03, Revision 1, dated March 2003, in the TS bases for TS 3.7.[10], and provides the following descriptions and justifications of the differences with Revision 0, dated June 2003. These justifications demonstrate that referencing Revision 1 does not conflict with the positions taken by the NRC staff in its endorsement of Revision 0 as stated in Regulatory Guide 1.196, ''Control Room Habitability at Light-Water Nuclear Power Reactors,'' dated May 2003.

[Insert descriptions and justifications for differences between Revision 0 and Revision 1 here.]

2.3 License Condition Regarding Initial Performance of New Surveillance and Assessment Requirements

[LICENSEE] proposes the following as a license condition to support implementation of the proposed TS changes:

Upon implementation of Amendment No. xxx adopting TSTF–448, Revision 3, the determination of control room envelope (CRE) unfiltered air inleakage as required by SR 3.7.[10].[4], in accordance with TS 5.5.[18].c.(i), the assessment of CRE habitability as required by Specification 5.5.[18].c.(ii), and the measurement of CRE pressure as required by Specification 5.5.[18].d, shall be considered met. Following implementation:

(a) The first performance of SR 3.7.[10.5], in accordance with Specification 5.5.[18].c.(i), shall be within the specified Frequency of 6 years, plus the 15-month allowance of SR 3.0.2, as measured from [date], the date of the most recent successful tracer gas test, as stated in the [date] letter response to Generic Letter 2003–01, or within the next 15 months if the time period since the most recent successful tracer gas test is greater than 6 years.

(b) The first performance of the periodic assessment of CRE habitability, Specification 5.5.[18].c.(ii), shall be within 3 years, plus the 9-month allowance of SR 3.0.2, as measured from [date], the date of the most recent successful tracer gas test, as stated in the [date] letter response to Generic Letter 2003–01, or within the next 9 months if the time period since the most recent successful tracer gas test is greater than 3 years.

(c) The first performance of the periodic measurement of CRE pressure, Specification 5.5.[18].d, shall be within [18] months, plus the [138] days allowed by SR 3.0.2, as measured from [date], the date of the most recent successful pressure measurement test, or within [138] days if not performed previously.

3.0 Regulatory Analysis

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** as part of the CLIIP. [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT] and is hereby incorporated by reference to satisfy the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, plant-specific verifications were performed as follows:

1. [LICENSEE] commits to the guidance of NEI 99–03, Revision 0, ''Control Room Habitability Assessment Guidance'' dated June 2001, which provides guidance and details on the assessment and management of control room envelope (CRE) habitability.

2. [LICENSEE] will revise procedures to implement the new surveillance and programmatic TS requirements related to CRE habitability.

3. [LICENSEE] commits to Regulatory Positions C.1 and C.2 of Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003, with the following exceptions:

[Add descriptions of proposed exceptions.]

4.0 Environmental Evaluation

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE] as part of the CLIIP. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT] and the evaluation is hereby incorporated by reference for this application.

Attachment 2—Proposed Technical Specification Changes (Mark-Up)

Attachment 3—Proposed Technical Specification Pages

Attachment 4—List of Regulatory Commitments

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date/event
[LICENSEE] commits to the guidance of NEI 99–03, Revision 0, ''Control Room Habitability Assessment Guidance'' dated June 2001, which provides guidance and details on the assessment and management of control room envelope (CRE) habitability.	[Ongoing or implement with amendment].
[LICENSEE] will revise procedures to implement the new surveillance and programmatic TS requirements related to CRE habitability.	[Implement with amendment].
[LICENSEE] commits to Regulatory Positions C.1 and C.2 of Regulatory Guide 1.197, ''Demonstrating Control Room Envelope Integrity at Nuclear Power Reactors,'' Revision 0, May 2003, with the following exceptions:. [Add descriptions of proposed exceptions.]	[Implement with amendment].

Attachment 5—Proposed Changes to Technical Specification Bases Pages

[FR Doc. E6–17246 Filed 10–16–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Review of a Revised Information Collection: RI 25–41

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 25–41, Initial Certification of Full-Time School Attendance, is used to determine whether a child is unmarried and a full-time student in a recognized school. OPM must determine this in order to pay survivor annuity benefits to children who are age 18 or older.

Approximately 1,200 RI 25–41 forms are completed annually. It takes approximately 90 minutes to complete

the form. The annual burden is 1,800 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

and

Brenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–17157 Filed 10–16–06; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: SF 3106 and SF 3106A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. SF 3106, Application for Refund of Retirement Deductions/Federal Employees Retirement System (FERS), is used by former Federal employees under FERS, to apply for a refund of retirement deductions withheld during Federal employment, plus any interest provided by law. SF 3106A, Current/Former Spouse(s) Notification of Application for Refund of Retirement Deductions Under FERS, is used by refund applicants to notify their current/former spouse(s) that they are applying for a refund of retirement deductions, which is required by law.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 17,000 SF 3106 forms will be processed annually. The SF 3106 takes approximately 30 minutes to complete for a total of 8,500 hours annually. Approximately 13,600 of SF 3106A forms will be processed annually. The SF 3106A takes approximately 5 minutes to complete for a total of 1,133 hours. The total annual burden is 9,633 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to *MaryBeth.Smith-Toomey@opm.gov.* Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 60 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349,Washington, DC 20415–3540.

For Information Regarding Administrative CoordinatioN Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–17158 Filed 10–16–06; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 30–2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits.

We estimate 21,000 RI 30–2 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, Fax (202) 418–3251 or via e-mail to *MaryBeth.Smith-Toomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—Pamela S. Israel, Chief, Operations Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540 andBrenda Aguilar, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services/Support Group, (202) 606–0623, Room 10235, Washington, DC 20503.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–17160 Filed 10–16–06; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program:Medically Underserved Areas for 2007

AGENCY: Office of Personnel Management.

ACTION: Notice of medically underserved areas for 2007.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2007. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2007, OPM's calculations show that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Arizona, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, Texas, West Virginia, and Wyoming. For the 2007 calendar year Texas is being added and Alaska is being removed from the list.

DATES: *Effective Date:* January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. The FEHB law also requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

Office of Personnel Management.

Linda M. Springer,

Director.

[FR Doc. E6–17161 Filed 10–16–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–27516; File No. 812–13301]

MONY Life Insurance Company of America, et al.

October 12, 2006.

AGENCY: The Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an order pursuant to Section 26(c) of the Investment Company Act of 1940 (the ''1940 Act'') approving certain substitutions of securities and an order of exemption pursuant to Section 17(b) of the 1940 Act from Section 17(a) of the 1940 Act.

SUMMARY OF APPLICATION: The Section 26 Applicants (as defined below) request an order approving the proposed substitution of shares of certain series of EQ Advisors Trust (''EQAT'') and AXA Premier VIP Trust (''VIP'', together with EQAT, the ''Trusts,'' and each, a ''Trust''), by the Separate Accounts (as defined below) for shares of similar series of unaffiliated registered investment companies (the ''Substitutions''). In particular, the Section 26 Applicants request an order pursuant to Section 26(c) approving the substitution of: (1) Class IA shares of the EQ/Calvert Socially Responsible Portfolio for Initial Class shares of The Dreyfus Socially Responsible Growth Fund, Inc.; (2) Class IA shares of the EQ/Mercury International Value Portfolio for Initial Class shares of the Dreyfus Variable Investment Fund—International Value Portfolio; (3) Class IA shares of the EQ/Lord Abbett Growth and Income Portfolio for Class VC shares of the Lord Abbett Series Fund—Growth and Income Portfolio; (4) Class IA shares of the EQ/Short Duration Bond Portfolio for shares of the T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio; (5) Class IA shares of EQ/Money Market Portfolio for shares of the T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio; (6) Class IA shares of the EQ/Alliance International Portfolio for shares of the T. Rowe Price International Series, Inc.—International Stock Portfolio; (7) Class IA shares of the EQ/Van Kampen Emerging Markets Equity Portfolio for Class I shares of The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio; (8) Class IA shares of the EQ/FI Mid Cap Portfolio for shares of the Old Mutual Insurance Series Fund—Mid-Cap Portfolio; (9) Class IA shares of the EQ/Lord Abbett Mid Cap Value Portfolio for Class VC shares of the Lord Abbett Series Fund—Mid-Cap Value Portfolio; (10) Class IA shares of the EQ/JPMorgan Core Bond Portfolio for Administrative Class shares of the PIMCO Variable Insurance Trust—Real Return Portfolio; and (11) Class A shares of the AXA Premier VIP High Yield Portfolio for Class VC shares of the Lord Abbett Series Fund—Bond Debenture Portfolio. Applicants also request an order of exemption to permit certain in-kind transactions in connection with the proposed Substitutions (the ''In-Kind Transactions''). Each of the portfolios involved in the Substitutions serves as an underlying investment option for certain variable annuity contracts and/or variable life insurance policies (''Contracts'') issued by the Insurance Companies (as defined below). The portfolios receiving assets in the Substitutions are referred to in this notice as the ''Replacement Portfolios.'' The portfolios from which the assets are transferred in connection with the Substitutions are referred to in this notice as the ''Removed Portfolios.''

APPLICANTS: MONY Life Insurance Company of America (''MLOA''), MONY Life Insurance Company (''MONY'', with MLOA, each an ''Insurance Company'' and collectively, the ''Insurance Companies''), MONY America Variable Account A (''MLOA Separate Account A''), MONY America Variable Account L (''MLOA Separate Account L'' and together with MLOA Separate Account A, ''MLOA Separate Accounts''), MONY Variable Account A (''MONY Separate Account A'') and MONY Variable Account L (''MONY Separate Account L'' and together with MONY Separate Account A, ''MONY Separate Accounts'') (the MONY Separate Accounts and the MLOA Separate Accounts are referred to as the ''Separate Accounts'' and individually as a ''Separate Account'') (the Separate Accounts and the Insurance Companies are referred to as the ''Section 26 Applicants''). EQAT is also an applicant for purposes of the order pursuant to Section 17(b) together with the Insurance Companies and the Separate Accounts (the ''Section 17 Applicants'').

FILING DATE: The application was filed on June 1, 2006 and amended on October 6, 2006.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 2, 2006 and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090. Applicants: c/o Steven M. Joenk, Senior Vice President, AXA Equitable Life Insurance Company, 1290 Avenue of the Americas, New York, New York 10104.

FOR FURTHER INFORMATION CONTACT: Ellen Sazzman, Senior Counsel, at (202) 551–6762, or Harry Eisenstein, Branch Chief, Office of Insurance Products at (202) 551–6795, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 100 F Street, NE., Washington, DC 20549 (tel. (202) 551–8090).

Applicants' Representations

1. MLOA is a stock life insurance company organized in 1969 under the laws of the State of Arizona. MLOA is licensed to sell life insurance and annuities in 49 states (not including New York), the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. MONY is a stock life insurance company organized in 1998 under the laws of New York. MONY is licensed to sell life insurance and annuities in 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Each Insurance Company is a wholly owned subsidiary of AXA Financial, Inc., a diversified financial services company, which is a wholly owned subsidiary of the AXA Group, the holding company for an international group of insurance and related financial services companies. MLOA serves as depositor for each of the MLOA Separate Accounts; MONY serves as depositor for each of the MONY Separate Accounts.

2. MLOA Separate Account A and MLOA Separate Account L were established under Arizona law in 1987 and 1985, respectively, pursuant to authority granted by MLOA's Board of Directors. Each MLOA Separate Account is a segregated asset account of MLOA and is registered with the Commission as a unit investment trust under the 1940 Act. The MLOA Separate Accounts fund the respective variable benefits available under the Contracts issued by MLOA. Units of interest in the MLOA Separate Accounts under the Contracts are registered under the Securities Act of 1933 (''1933 Act'').[1]

3. MONY Separate Account A and MONY Separate Account L were each established under New York law in 1990 pursuant to authority granted by MONY's Board of Trustees. Each MONY Separate Account is a segregated asset account of MONY and is registered with the Commission as a unit investment trust under the 1940 Act. The MONY Separate Accounts fund the respective variable benefits available under the Contracts issued by MONY. Units of interest in the MONY Separate Accounts under the Contracts are registered under the 1933 Act.[2]

4. EQAT and VIP are each organized as a Delaware statutory trust and registered as an open-end management investment company under the 1940 Act. Each is an affiliate of the Section 26 Applicants. The shares of each Trust are registered under the 1933 Act. Each Trust is a series investment company. EQAT currently has 63 separate series and VIP currently has 20 separate series (each a ''Portfolio'' and collectively, the ''Portfolios''). AXA Equitable Life Insurance Company currently serves as investment manager (''Manager'') of each of the Portfolios. The Replacement Portfolios are series of the Trusts. The Removed Portfolios are series of unaffiliated registered investment companies.

5. Each Trust currently offers two classes of shares, Class IA and Class IB shares for EQAT and Class A and Class B shares for VIP, which differ only in that Class IB and Class B shares are subject to a distribution plan adopted and administered pursuant to Rule 12b-1 under the 1940 Act. Under that distribution plan, up to 0.50% of the average daily net assets attributable to the Class IB or Class B shares of each Portfolio may be used to pay for distribution and shareholder services. The distributors for the shares of each Portfolio are AXA Advisors, LLC (''AXA Advisors'') and AXA Distributors, LLC (''AXA Distributors''). Under the Distribution Agreements with respect to the promotion, sale and servicing of shares of each Portfolio, payments to AXA Advisors and AXA Distributors, with respect to activities under the distribution plan, are currently limited to payments at an annual rate equal to 0.25% of the average daily net assets of each Portfolio (including the Replacement Portfolios) attributable to its Class IB or Class B shares.

6. The Manager has retained investment sub-advisers (''Advisers'') to provide day-to-day investment advisory services for each of the 61 of the 63 current EQAT Portfolios and 11 of the 20 current VIP Portfolios. The Trusts have received an exemptive order from the Commission (''Multi-Manager Order'') that permits the Manager, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with the Manager, subject to certain conditions, including approval of the Board of Trustees of the relevant Trust, and without the approval of shareholders to: (i) Select new or additional Advisers for each Portfolio; (ii) enter into new Investment Advisory Agreements with Advisers (''Advisory Agreements'') and/or materially modify the terms of any existing Advisory Agreement; (iii) terminate any existing Adviser and replace the Adviser; and (iv) continue the employment of an existing Adviser on the same contract terms where the Advisory Agreement has been assigned because of a change of control of the Adviser.

7. The variable annuity Contracts subject to this Application include flexible premium deferred variable annuity contracts with a variety of sales charge structures. These variable annuity Contracts are issued to or on behalf of individuals. All variable annuity Contracts allow the Contract owner to allocate contributions or premium payments among the variable and any fixed investment options available under the variable annuity Contracts. The contributions or premium payments accumulate in the investment options. The variable life insurance Contracts issued by the Insurance Companies include flexible premium individual variable life, second to die and corporate variable life policies. Premium payments under the variable life insurance Contracts

[1] *See* File Nos. 333–72632, 333–91776, 333–59717, 333–92066 (MLOA Separate Account A) and 333–06071, 333–104162, 333–72596, 333–56969, 33–82570, 333–64417, 333–72578 (MLOA Separate Account L).

[2] *See* File No. 333–72714, 333–92320, 333–92312, 333–72259 (MONY Separate Account A) and 333–104156, 333–71417, 333–01581, 333–72590, 333–71677, 333–72594 (MONY Separate Account L).

accumulate in variable and any fixed investment options.

8. The Section 26 Applicants have reserved the right under the Contracts to substitute shares of another eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. The prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right.

9. The Contracts do not restrict transfers from a variable subaccount and there are no limits on transfers into a variable subaccount or a guaranteed account (for those Contracts that offer a guaranteed account investment option), although transfer charges may apply. For those variable annuity Contracts that offer a guaranteed account investment option, except with respect to New York variable annuity Contracts, transfers from the guaranteed account are subject to a market value adjustment if the transfer request is not received at the end of the prescribed accumulation period. In addition, for New York variable annuity Contracts, a minimum amount must be maintained in a guaranteed account for those Contracts that have investments in such accounts and a minimum number of free transfers are guaranteed. For variable life insurance Contracts that offer a guaranteed account investment option, there is a dollar limit on the amount that can be held in, and the amount that may be transferred from, the guaranteed account. Also with respect to variable life insurance Contracts, transfers from a guaranteed account may only be made once a year. With respect to certain variable life insurance Contracts, including New York life insurance Contracts, there are a minimum number of free transfers guaranteed. With respect to corporate-owned life insurance Contracts, transfers are not permitted between a guaranteed account and a fixed separate account.

10. Each Insurance Company, on its own behalf and on behalf of its Separate Accounts, proposes to exercise its contractual right to substitute a different eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. In particular, the Section 26 Applicants propose the following substitutions:

Removed portfolios	Replacement portfolios
The Dreyfus Socially Responsible Growth Fund, Inc. (Initial Class shares).	EQ/Calvert Socially Responsible Portfolio (Class IA shares).
Dreyfus Variable Investment Fund—International Value Portfolio (Initial Class shares).	EQ/Mercury International Value Portfolio (Class IA shares).
Lord Abbett Series Fund—Growth and Income Portfolio (Class VC shares).	EQ/Lord Abbett Growth and Income Portfolio (Class IA shares).
T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio	EQ/Short Duration Bond Portfolio (Class IA shares).
T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio	EQ/Money Market Portfolio (Class IA shares).
T. Rowe Price International Series, Inc.—International Stock Portfolio ..	IEQ/Alliance International Portfolio (Class IA shares).
The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio (Class I shares).	EQ/Van Kampen Emerging Markets Equity Portfolio (Class IA shares).
Old Mutual Insurance Series Fund—Mid-Cap Portfolio	EQ/FI Mid Cap Portfolio (Class IA shares).
Lord Abbett Series Fund—Mid-Cap Value Portfolio (Class VC shares)	EQ/Lord Abbett Mid Cap Value Portfolio (Class IA shares).
PIMCO Variable Insurance Trust—Real Return Portfolio (Administrative Class shares).	EQ/JPMorgan Core Bond Portfolio (Class IA shares).
Lord Abbett Series Fund—Bond-Debenture Portfolio (Class VC shares)	AXA Premier VIP High Yield Portfolio (Class A shares).

11. The Section 26 Applicants propose the Substitutions as part of a continued and overall business plan by each of the Insurance Companies to make its Contracts more attractive to existing Contract owners or to prospective purchasers, as the case may be. Each Insurance Company has reviewed its Contracts and each investment option offered under its Contracts with the goal of providing a superior choice of investment alternatives. The Substitutions are being proposed to address the lack of Contract owner interest in the Removed Portfolios, which generally have not attracted sufficient Contract owner interest to support maintaining them as separate investment options under the Contracts, particularly where they duplicate or substantially overlap with other investment options offered through the Separate Accounts. The Substitutions also are intended to simplify the prospectuses and related materials with respect to the Contracts and the investment options available through the Separate Accounts. Additionally, each Substitution will substitute shares of the Replacement Portfolio for shares of the Removed Portfolio, which has similar investment objectives, policies and risks as the Replacement Portfolio. In addition, the Insurance Companies have agreed to impose certain expense limits with respect to the Replacement Portfolios for certain periods after the Substitutions, as described below. Furthermore, the Substitutions ultimately may enable the Insurance Companies to reduce certain of the costs that they incur in administering the Contracts by removing overlapping and unpopular Portfolios. Moreover, the proposed Substitutions would replace an unaffiliated Portfolio with a Portfolio for which AXA Equitable serves as Manager and, thus, would permit AXA Equitable to appoint, dismiss and replace Advisers and amend Advisory Agreements as necessary to seek optimal performance from the Portfolio and its portfolio managers. Finally, the Substitutions are designed to provide Contract owners with an opportunity to continue their investment in a similar Portfolio without interruption and without any cost to them.

12. The Insurance Companies have agreed to bear all expenses incurred in connection with the Substitutions and related filings and notices, including legal, accounting, brokerage and other fees and expenses. On the effective date of the Substitutions (''Substitution Date''), the amount of any Contract owner's Contract value or the dollar value of a Contract owner's investment in the relevant Contract will not change as a result of the Substitutions.

13. The following is a description and comparison of the investment objectives, policies and risks of each Removed Portfolio and its corresponding Replacement Portfolio:

(1)

Removed Portfolio	Replacement Portfolio
The Dreyfus Socially Responsible Growth Fund, Inc. (Initial Class shares): The Portfolio seeks to provide capital growth, with current income as a secondary goal. Under normal circumstances, the Portfolio invests at least 80% of its assets in common stocks of companies that the manager believes meet traditional investment standards and conduct their business in a manner that contributes to the enhancement of the quality of life in America. The Portfolio normally focuses on large-cap growth stocks. The Portfolio may also invest in value-oriented stocks, mid-cap stocks and small-cap stocks. The Portfolio may invest in foreign securities. The Portfolio may invest in securities of companies in initial public offerings ("IPOs") and derivatives. The Portfolio may invest up to 15% of the value of its net assets in illiquid securities.	EQ/Calvert Socially Responsible Portfolio (Class IA shares): The Portfolio seeks long-term capital appreciation. Under normal circumstances, the Portfolio invests at least 80% of its net assets in large-cap companies that meet both investment and social criteria. The Adviser utilizes multiple investment styles in selecting securities including growth, growth at a reasonable price, value and momentum models. The Portfolio may invest up to 10% of its total assets in foreign securities and up to 15% of its net assets in illiquid securities. The Portfolio also may invest in derivatives and in securities issued in an IPO.
Principal Risks: • Market Risk • Issuer Risk • Market Sector Risk • Social Investment Risk • Small and Midsize Company Risk • Growth Stock Risk • Value Stock Risk • Foreign Investment Risk	Principal Risks: • Market Risk • Asset Class Risk • Equity Risk • Adviser Selection Risk • Security Selection Risk • Derivatives Risk • Foreign Securities Risk • Security Risk • Liquidity Risk • Mid-Cap Company Risk

The Section 26 Applicants believe that The Dreyfus Socially Responsible Growth Fund, Inc. and the EQ/Calvert Socially Responsible Portfolio have substantially similar investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in securities of companies that satisfy both social and investment criteria. Each Portfolio invests mostly in large-cap companies, but also may invest in small- and mid-cap companies. In addition, the Section 26 Applicants believe that the Portfolios' advisers use comparable investment styles in managing each Portfolio's assets and that, while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to very similar portfolio risks, such as equity risk, social investing risk and foreign securities risk.

(2)

Removed Portfolio	Replacement Portfolio
Dreyfus Variable Investment Fund—International Value Portfolio (Initial Class shares): The Portfolio seeks long term capital growth. The Portfolio normally invests at least 80% of its assets in stocks. The Portfolio invests most of its assets in securities of foreign companies which the adviser considers to be value companies. The Portfolio may invest in securities of companies of any size and may invest in companies located in emerging markets. The Portfolio also may invest in stocks issued in an IPO, it may invest in derivatives and it may make short sales.	EQ/Mercury International Value Portfolio (Class IA shares): The Portfolio seeks to provide current income and long-term growth of income, accompanied by growth of capital. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in stocks that pay dividends. Stocks may include common stocks, preferred stocks, securities convertible into common or preferred stocks and warrants. The Portfolio invests primarily in securities of companies located in developed foreign markets, but may invest in securities issued by companies located in emerging markets. In investing the Portfolio's assets, the Adviser follows a value investment style. The Portfolio may invest in companies of any size, although it generally will invest in large cap companies. The Portfolio also may invest in derivatives and in securities issued in an IPO.
Principal Risks: • Market Risk • Issuer Risk • Market Sector Risk • Small and Midsize Company Risk • Value Stock Risk • Foreign Investment Risk • Foreign Currency Risk • Emerging Market Risk • Derivatives Risk • Short Sale Risk • IPO Risk	Principal Risks: • Market Risk • Asset Class Risk • Equity Risk • Adviser Selection Risk • Security Selection Risk • Convertible Securities Risk • Derivatives Risk • Liquidity Risk • Small-Cap and Mid-Cap Company Risk • Value Investing Risk • Security Risk • Foreign Securities Risk • Currency Risk • Depositary Receipts Risk • Emerging Market Risk • Settlement Risk

The Section 26 Applicants believe that the Dreyfus Variable Investment Fund—International Value Portfolio and the EQ/Mercury International Value Portfolio have similar investment objectives and substantially similar investment policies and risks. The Section 26 Applicants also believe that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in foreign stocks. In addition, the Section 26 Applicants believe that the Portfolios' advisers use a value investment style in managing each Portfolio's assets. Each Portfolio may invest in companies of any size and in companies located in emerging markets. Moreover, the Section 26 Applicants believe that while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. The Section 26 Applicants note that each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to very similar portfolio risks, such as equity risk, foreign securities and emerging markets risk and value investing risk.

(3)

Removed portfolio	Replacement portfolio
Lord Abbett Series Fund—Growth and Income Portfolio (Class VC shares): The Portfolio seeks long term growth of capital and income without excessive fluctuations in market value. Under normal circumstances, the Portfolio will invest at least 80% of its net assets in equity securities of large companies. The Portfolio primarily purchases equity securities of large, seasoned U.S. and multi-national companies that the adviser believes are undervalued. Equity securities in which the Portfolio may invest may include common stocks, preferred stocks, convertible securities, warrants, and similar instruments. The Portfolio may purchase and write national securities exchange-listed put and call options on securities or securities indices and it may use options for hedging or cross-hedging purposes or to seek to increase total return. Principal Risks: • Market Risk • Asset Class Risk • Equity Risk • Security Selection Risk • Liquidity Risk • Foreign Securities Risk • Security Risk • Value Investing Risk	EQ/Lord Abbett Growth and Income Portfolio (Class IA shares): The Portfolio seeks capital appreciation and growth of income without excessive fluctuation in market value. Under normal circumstances, the Portfolio invests at least 80% of its net assets in equity securities of large companies. The Portfolio primarily purchases equity securities of large, seasoned U.S. and multi-national companies that the Adviser believes are undervalued. Equity securities in which the Portfolio may invest include common stocks, preferred stocks, convertible securities, warrants, and similar instruments. The Portfolio may purchase and write exchange-listed put and call options on securities or securities indices for hedging or cross-hedging purposes or to seek to increase total return. Principal Risks: • Convertible Securities Risk • Derivatives Risk • Futures and Options Risk • Security Selection Risk • Equity Risk • Foreign Securities Risk • Value Investing Risk • Adviser Selection Risk • Asset Class Risk • Market Risk • Security Risk

The Section 26 Applicants believe that the Lord Abbett Series Fund—Growth and Income Portfolio and the EQ/Lord Abbett Growth and Income Portfolio have substantially identical investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in equity securities of large companies. Each Portfolio also may invest in foreign securities and derivatives for hedging and non-hedging purposes to the same extent. In addition, the Section 26 Applicants believe that the adviser to each Portfolio, which is the same for both Portfolios, uses an identical investment style in managing each Portfolio's assets and that, while the principal risks are stated somewhat differently, the Portfolios have substantially identical risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to substantially identical portfolio risks, such as equity risk, foreign securities risk and value investing risk.

(4)

Removed portfolio	Replacement portfolio
T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio: The Portfolio seeks a high level of current income consistent with moderate fluctuations in principal value. Normally, the Portfolio invests at least 80% of its net assets in bonds and 65% of total assets in short- and intermediate-term bonds. There are no maturity limitations on individual securities purchased, but the Portfolio's average effective maturity will not exceed five years. At least 90% of the Portfolio's assets will consist of investment grade securities and up to 10% of its assets can be invested in below investment grade securities. The Portfolio's holdings may include mortgage-backed securities, derivatives and foreign securities. There is no limit on the Portfolio's investments in U.S. dollar-denominated debt securities issued by foreign issuers, foreign branches of U.S. banks, and U.S. branches of foreign banks, however, the Portfolio may only invest up to 10% of its total assets (excluding reserves) in non-U.S. dollar-denominated fixed-income securities. Principal Risks: • Interest Rate Risk • Credit Risk • Prepayment and Extension Risk • Derivatives Risk • Foreign Investing Risk	EQ/Short Duration Bond Portfolio (Class IA shares): The Portfolio seeks current income and reduced volatility of principal. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in bonds and other debt securities. These securities include U.S. Government bonds and notes, corporate bonds, municipal bonds, asset-backed bonds, mortgage-related bonds, convertible securities and preferred stocks. The Portfolio intends to invest only in investment grade fixed income securities and seeks to maintain a minimum average credit quality rating of "A." The Portfolio may invest in securities with effective or final maturities of any length at the time of purchase, but it is anticipated that the average effective maturity of the Portfolio will range from one to four years. The average duration of the overall Portfolio will be between one and three years. The Portfolio also may invest in derivatives and up to 20% of its total assets in U.S. dollar denominated fixed income securities of foreign issuers. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Derivatives Risk • Fixed Income Risk • Asset-Backed Securities Risk • Credit Risk • Interest Rate Risk • Investment Grade Securities Risk

(4)—Continued

Removed portfolio	Replacement portfolio
	• Mortgage-Backed Securities Risk • Foreign Securities Risk • Security Risk

The Section 26 Applicants believe that the T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio and the EQ/Short Duration Bond Portfolio have substantially similar investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in investment grade bonds and seeks to maintain an average effective maturity that is generally within the same range. Each Portfolio may invest in the same types of debt securities, such as asset-backed and mortgage-backed securities. Each Portfolio also may invest in U.S. dollar-denominated debt securities of foreign issuers and derivatives. Moreover, the Section 26 Applicants believe that while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as asset class risk and security risk, and to very similar portfolio risks, such as fixed income risk, including credit risk and interest rate risk, foreign securities risk and derivatives risk.

(5)

Removed Portfolio	Replacement Portfolio
T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio: The Portfolio seeks to preserve capital, liquidity and, consistent with these, the highest possible current income. The Portfolio is a money market fund, which is managed to provide a stable share price of $1.00 and invests in high-quality U.S. dollar-denominated money market securities. The fund's average weighed maturity will not exceed 90 days and it will not purchase any security with a maturity longer than 13 months. Principal Risks: • Credit Risk • Interest Rate Risk • Money Market Risk	EQ/Money Market Portfolio (Class IA shares): The Portfolio seeks to obtain a high level of current income, preserve its assets and maintain liquidity. The Portfolio invests primarily in a diversified portfolio of high-quality U.S. dollar denominated money market instruments. The Portfolio will maintain a dollar-weighted average portfolio maturity of 90 days or less and will invest only in instruments with a remaining maturity of 397 calendar days or less. The Portfolio may invest in mortgaged-backed and asset-backed securities and normally invests at least 25% of its net assets in bank obligations. The Portfolio may also invest up to 20% of its total assets in U.S. dollar denominated money market instruments of foreign branches of foreign banks. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Banking Industry Sector Risk • Foreign Securities Risk • Security Risk • Money Market Risk • Fixed Income Risk • Credit Risk • Interest Rate Risk • Asset-Backed Securities Risk • Mortgage-Backed Securities Risk

The Section 26 Applicants believe that the T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio and the EQ/Money Market Portfolio have substantially identical investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio is a money market fund and invests all of its assets in high-quality U.S. dollar denominated money market instruments permitted under Rule 2a–7 under the 1940 Act. In addition, each Portfolio is managed to maintain a stable share price of $1.00 and has an average weighted maturity that will not exceed 90 days. The Section 26 Applicants believe that the Portfolios also have substantially identical risk profiles. Each Portfolio is subject to general investment risks, such as asset class risk and security risk, and to very similar portfolio risks, such as money market risk and fixed income risk, including credit risk and interest rate risk.

(6)

Removed portfolio	Replacement portfolio
T. Rowe Price International Series, Inc.—International Stock Portfolio: The Portfolio seeks long-term growth of capital through investments primarily in common stocks of established, non-U.S. companies. Normally, at least 80% of the Portfolio's net assets will be invested in stocks. The Portfolio expects to invest substantially all of its assets in stocks outside the U.S. and to diversify broadly among developed and emerging countries throughout the world. The Portfolio utilizes an investment style that incorporates growth and value investing components. The Portfolio may purchase securities of any size, but focuses on large and, to a lesser extent, medium-sized companies. The Portfolio may invest in derivatives. Principal Risks: • Currency Risk • Geographic Risk • Emerging Market Risk • Foreign Investing Risk • Futures/Options Risk	EQ/Alliance International Portfolio (Class IA shares): The Portfolio seeks to achieve long-term growth of capital. The Portfolio intends, under normal market conditions, to invest primarily in equity securities. The Portfolio invests in both growth-oriented and value-oriented stocks of non-U.S. companies. The growth portion of the Portfolio invests primarily in a diversified portfolio of equity securities of non-U.S. companies or foreign governmental enterprises from anywhere in the world (including in emerging markets). The value portion of the Portfolio invests primarily in equity securities of issuers in countries that comprise the MSCI EAFE Index and Canada. The Portfolio also may invest in any investment grade fixed income security and in derivatives. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Security Risk • Convertible Securities Risk • Derivatives Risk • Equity Risk • Fixed Income Risk • Investment Grade Securities Risk • Interest Rate Risk • Foreign Securities Risk • Currency Risk • Emerging Markets Risk • Value Investing Risk • Growth Investing Risk

The Section 26 Applicants believe that the T. Rowe Price International Series, Inc.—International Stock Portfolio and the EQ/Alliance International Portfolio have substantially similar investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in equity securities of foreign companies. Each Portfolio may invest companies in developed and emerging markets. Each Portfolio also invests mostly in large-cap companies, but may invest in smaller companies as well. In addition, the Section 26 Applicants believe that the adviser to each Portfolio uses comparable investment styles in managing each Portfolio's assets and that, while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to very similar portfolio risks, such as equity risk, foreign securities and emerging markets risk and growth investing risk.

(7)

Removed Portfolio	Replacement Portfolio
The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio (Class I shares): The Portfolio seeks long-term capital appreciation by investing primarily in growth-oriented equity securities of issuers in emerging market countries. Under normal circumstances, at least 80% of the Portfolio's assets will be invested in equity securities located in emerging market countries. The Portfolio combines top-down country allocation with bottom-up stock selection. The Portfolio also may invest in derivatives and, to a limited extent, in U.S. Government securities and debt securities rated below investment grade (also known as "junk bonds"). Principal Risks: • Market Risk • Emerging Markets Risk • Foreign Securities Risk • Currency Risk • Security Risk • Derivatives Risk	EQ/Van Kampen Emerging Markets Equity Portfolio (Class IA shares): The Portfolio seeks long-term capital appreciation. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in equity securities of companies located in emerging market countries or other equity investments that are tied economically to emerging market countries. Such equity securities may include common stocks, securities convertible into common stocks, preferred stocks, depositary receipts, rights and warrants. The Portfolio combines top-down country allocation with bottom-up stock selection. The Portfolio also may invest, to a limited extent, in debt securities rated below investment grade (also known as "junk bonds"). The Portfolio currently is non-diversified, however, it is expected that the Portfolio's subclassification will be changed from non-diversified to diversified prior to the Substitution. The Portfolio may also invest in derivatives to a limited extent. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Convertible Securities Risk • Derivatives Risk

(7)—Continued

Removed Portfolio	Replacement Portfolio
• Equity Risk	• Equity Risk • Fixed Income Risk • Junk Bonds and Lower Rated Securities Risk • Foreign Securities Risk • Currency Risk • Emerging Markets Risk • Security Risk • Growth Investing Risk • Liquidity Risk • Portfolio Turnover Risk • Focused Portfolio Risk

The Section 26 Applicants believe that The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio and the EQ/Van Kampen Emerging Markets Equity Portfolio have substantially identical investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in equity securities of companies located in emerging markets countries. In addition, the Portfolios' advisers are affiliated companies. The Section 26 Applicants believe that the Portfolios' advisers use a substantially identical investment style in managing each Portfolio's assets and that, while the principal risks are stated somewhat differently, the Portfolios have substantially identical risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to substantially identical portfolio risks, such as equity risk, foreign securities and emerging markets risk and growth investing risk.

(8)

Removed portfolio	Replacement portfolio
Old Mutual Insurance Series Fund—Mid-Cap Portfolio: The Portfolio seeks to provide above-average total return over a 3 to 5 year market cycle, consistent with reasonable risk. The Portfolio normally invests at least 80% of its net assets, plus any borrowings for investment purposes, in equity securities of mid-cap companies. The Portfolios also may invest in small-cap companies. The Portfolio invests in companies believed to have attractive valuations relative to the sector and the market, near-term business dynamics and long-term earnings growth. The Portfolio may invest up to 20% of its net assets in foreign-traded securities and derivatives..	EQ/FI Mid Cap Portfolio (Class IA shares): The Portfolio seeks long-term growth of capital. The Portfolio normally invests at least 80% of its net assets, plus any borrowings for investment purposes, in common stocks of companies with medium market capitalizations. The Portfolio may also invest in companies with smaller or larger market capitalization and securities of foreign issuers. The Portfolio is not constrained by any particular investment style and may buy growth-oriented or value-oriented stock or a combination of both. The Portfolio may invest up to 20% of its net assets in derivatives and, while the Portfolio does not have a stated limit with respect to investments in securities of foreign issuers, from January 1, 2004 through June 30, 2006, the Portfolio generally has invested between 10–20% of its net assets in such securities.
Principal Risks: • Market Risk • Small and Mid-Size Company Risk • Industry and Sector Risk	Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Equity Risk • Derivatives Risk • Foreign Securities Risk • Security Risk • Portfolio Turnover Risk • Small-Cap and Mid-Cap Company Risk • Growth Investing Risk • Value Investing Risk

The Section 26 Applicants believe that the Old Mutual Insurance Series Fund—Mid-Cap Portfolio and the EQ/FI Mid Cap Portfolio have very similar investment objectives and substantially similar investment policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. The Section 26 Applicants believe that the Portfolios are substantially similar given their focus on investments in equity securities of mid-cap companies. The Section 26 Applicants do not believe that the income component of the Removed Portfolio's investment objective is a significant difference between the Portfolios given that, as a general matter, mid-cap companies do not pay significant, if any, dividends. In this connection, the Section 26 Applicants note that, for the fiscal year ended December 31, 2005, the Removed Portfolio's net investment income (including dividend income) was only approximately $122,000 on an asset base of about $55 million. The Section 26 Applicants also note that each Portfolio may also invest, to a limited extent, in securities of small-cap companies, foreign securities and derivatives. The Section 26 Applicants believe that the Portfolios' advisers also use comparable investment styles in managing each Portfolio's assets and

that, while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to very similar portfolio risks, such as equity risk, mid-cap company risk and foreign securities risk.

(9)

Removed portfolio	Replacement portfolio
Lord Abbett Series Fund—Mid-Cap Value Portfolio (Class VC shares): The Portfolio seeks capital appreciation through investments, primarily in equity securities, which are believed to be undervalued in the marketplace. The Portfolio normally invests at least 80% of its net assets, plus any borrowings for investment purposes, in equity securities of mid-sized companies. The Portfolio may invest in convertible bonds, convertible preferred stocks, warrants and similar instruments. The Portfolio uses a value approach. The Portfolio may invest up to 10% of its net assets in foreign securities that are primarily traded outside the United States and may also invest in ADRs (which are not included in the 10% limitation). The Portfolio may also purchase and write national securities exchange-listed put and call options on securities or securities indices and it may use options for hedging or cross-hedging purposes or to seek to increase total return. Principal Risks: • Market Risk • Security Selection Risk • Equity Risk • Value Investing Risk • Mid-Cap Company Risk • Security Risk	EQ/Lord Abbett Mid Cap Value Portfolio (Class IA shares): The Portfolio seeks capital appreciation. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus any borrowings for investment purposes, in equity securities of mid-sized companies. The Portfolio uses a value approach that seeks to identify stocks of companies that have the potential for significant market appreciation due to growing recognitions of improvement (or anticipated improvement) in their financial results. The Portfolio may invest: (1) Without limit in ADRs and similar depositary receipts; (2) up to 10% of its assets in other foreign securities; and (3) in convertible securities. The Portfolio may also purchase and write exchange-listed put and call options on securities or securities indices for hedging or cross-hedging purposes or to seek to increase total return. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Security Risk • Convertible Securities Risk • Derivatives Risk • Futures and Options Risk • Equity Risk • Mid-Cap Company Risk • Value Investing Risk

The Section 26 Applicants believe that the Lord Abbett Series Fund—Mid Cap Value Portfolio and the EQ/Lord Abbett Mid Cap Value Portfolio have substantially identical investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in equity securities of mid-sized companies. Each Portfolio also may invest in foreign securities and derivatives for hedging and non-hedging purposes to the same extent. In addition, the Section 26 Applicants believe that the adviser to each Portfolio, which is the same for both Portfolios, uses an identical investment style in managing each Portfolio's assets and that, while the principal risks are stated somewhat differently, the Portfolios have substantially identical risk profiles. Each Portfolio is subject to general investment risks, such as market risk, asset class risk and security risk, and to substantially similar portfolio risks, such as equity risk, mid-cap company risk and value investing risk.

(10)

Removed portfolio	Replacement portfolio
PIMCO Variable Insurance Trust—Real Return Portfolio (Administrative Class shares): The Portfolio seeks maximum real return consistent with preservation of real capital and prudent investment management. Under normal circumstances, the Portfolio invests at least 80% of its net assets in inflation-indexed bonds of varying maturities issued by United States and non-U.S. issuers, their agencies or government-sponsored enterprises and corporations. The Portfolio invests primarily in investment grade securities, but also may invest up to 10% in high yield bonds. The average duration varies within 3 years (plus or minus) of the Lehman Brothers U.S. TIPS Index (as of March 31, 2006, 6.9 years). The Portfolio may invest up to 30% in securities denominated in foreign currencies and beyond this limit in U.S. dollar denominated securities of foreign issuers. The Portfolio also may invest in derivatives. The Portfolio is non-diversified. Principal Risks: • Market Risk • Issuer Risk • Interest Rate Risk • Credit Risk • High Yield Risk • Liquidity Risk • Derivatives Risk	EQ/JPMorgan Core Bond Portfolio (Class IA shares): The Portfolio seeks a high total return consistent with moderate risk to capital and maintenance of liquidity. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus borrowings for investment purposes, in investment grade debt securities. These securities principally include U.S. Government and agency securities, corporate securities, private placements, asset-backed securities, mortgage-related securities and direct mortgage obligations. The overall duration generally will be within one year of the Portfolio's benchmark, the Lehman Brothers Aggregate Bond Index (as of March 31, 2006, 4.68 years). The Portfolio may invest up to 25% of assets in foreign issuers, including up to 20% in debt securities denominated in currencies of developed foreign countries. The Portfolio may invest in derivatives. Principal Risks: • Market Risk • Asset Class Risk • Adviser Selection Risk • Security Selection Risk • Derivatives Risk • Fixed Income Risk • Mortgage-Backed Securities Risk

(10)—Continued

Removed portfolio	Replacement portfolio
• Mortgage Risk • Foreign Investment Risk • Currency Risk • Issuer Non-Diversification Risk • Leveraging Risk • Management Risk	• Asset-Backed Securities Risk • Credit Risk • Interest Rate Risk • Investment Grade Securities Risk • Foreign Securities Risk • Security Risk • Liquidity Risk • Portfolio Turnover Risk

The Section 26 Applicants believe that the PIMCO Variable Insurance Trust—Real Return Portfolio and the EQ/JPMorgan Core Bond Portfolio have substantially similar investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests primarily in investment grade debt securities and seeks to maintain a duration that is generally within the same range. Each Portfolio also may invest, to a limited extent, in foreign securities and derivatives. Moreover, the Section 26 Applicants believe that while the principal risks are stated somewhat differently, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as asset class risk and security risk, and to substantially similar portfolio risks, such as fixed income risk, including investment grade securities risk, credit risk and interest rate risk, and foreign securities risk.

(11)

Removed portfolio	Replacement portfolio
Lord Abbett Series Fund—Bond-Debenture Portfolio (Class VC shares): The Portfolio seeks high current income and the opportunity for capital appreciation to produce a high total return. Under normal circumstances, the Portfolio invests at least 80% of its net assets, plus the amount of any borrowings for investment purposes, in fixed income securities of various types. The Portfolio may invest in high-yield debt securities and mortgage- and asset-backed securities. The Portfolio has found good value in high-yield securities and has invested more than half of its assets in these securities. At least 20% of the Portfolio's net assets must be invested in any combination of investment grade debt securities, U.S. Government securities and cash equivalents. The Portfolio may also invest up to 20% of its net assets in equity securities and up to 20% of its net assets in foreign securities.	AXA Premier VIP High Yield Portfolio (Class A shares): The Portfolio seeks high total return through a combination of current income and capital appreciation. Under normal circumstances, the Portfolio intends to invest at least 80% of its net assets, plus borrowings for investment purposes, in a diversified mix of bonds that are rated below investment grade. The Advisers select bonds from several sectors, including commercial and residential mortgage-backed securities, asset-backed securities, corporate bonds and bonds of foreign issuers. The Portfolio also may invest in equity securities, derivatives and, to a limited extent, illiquid securities. In addition, the Portfolio may invest up to 20% of its net assets in investment grade debt securities.
Principal Risks: • Market Risk • Issuer Risk • Debt Securities Risk • Interest Rate Risk • High-Yield Debt Securities Risk • Mortgage-Related Securities Risk • Credit Risk • Equity Risk • Foreign Securities Risk	Principal Risks: • Adviser Selection Risk • Credit/Default Risk • Currency Risk • Derivatives Risk • Foreign Investing and Emerging Markets Risk • Interest Rate Risk • Liquidity Risk • Lower-Rated Securities Risk • Loan Participation Risk • Mortgage-Backed and Asset-Backed Securities Risk • Portfolio Management Risk • Issuer-Specific Risk

The Section 26 Applicants believe that the Lord Abbett Series Fund—Bond Debenture Portfolio and the AXA Premier VIP High Yield Portfolio have substantially similar investment objectives, policies and risks and that the essential objectives and expectations of Contract owners will continue to be met after the Substitution. In this connection, the Section 26 Applicants note that each Portfolio invests virtually all of its assets in fixed income securities. In addition, each Portfolio invests largely in high-yield securities and also may invest in investment grade debt securities. Applicants note that the Removed Portfolio generally invests at least 20% of its net assets in investment grade debt securities, while the Replacement Portfolio generally invests no more than 20% of its net assets in such securities. Applicants believe, however, that this is neither a significant difference in the investment policies of the Portfolios nor a difference that significantly alters the overall risk profile of either Portfolio. In this connection, Applicants note that the Removed Portfolio has only invested approximately 23% of its assets in investment grade debt securities over the past three fiscal years, while the Replacement Portfolio has invested approximately 8% of its assets in such securities over the same period. Thus, each Portfolio has invested the substantial majority (indeed, more than three quarters of the Portfolio) in high-yield debt securities over the last three

fiscal years. Each Portfolio also may invest, to a limited extent, in equity securities and foreign securities. Moreover, the Section 26 Applicants believe that while the principal risks are stated somewhat differently, as noted above, the Portfolios have substantially similar risk profiles. Each Portfolio is subject to general investment risks, such as asset class risk and security risk, and to substantially similar portfolio risks, such as fixed income risk, including high-yield securities risk, investment grade securities risk, credit risk and interest rate risk, and foreign securities risk.

14. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Initial Class shares of The Dreyfus Socially Responsible Growth Fund, Inc. (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Calvert Socially Responsible Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio.[3] Class IA shares of the Replacement Portfolio and the Initial Class shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	The Dreyfus Socially Responsible Growth Fund, Inc. (percent)	EQ/Calvert Socially Responsible Portfolio (percent)
Management Fee[4]	0.75	0.65
Rule 12b–1 Fee	None	None
Other Expenses	0.06	0.27
Total Annual Operating Expenses	0.81	0.92
Less Fee Waiver/Expense Reimbursement[5]	N/A	(0.12)
Net Annual Operating Expenses	0.81	0.80

For the fiscal year ended December 31, 2005, the net annual operating expense ratio of the Replacement Portfolio was lower than the Removed Portfolio's net annual operating expense ratio due primarily to the Replacement Portfolio's lower management fee rate and an expense limitation arrangement in effect for the Replacement Portfolio.

As of December 31, 2005, the assets of the Replacement Portfolio were approximately $72.5 million, while the assets of the Removed Portfolio were approximately $431.2 million. Although the Replacement Portfolio is smaller than the Removed Portfolio, it is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's annual operating expense ratio immediately after the Substitution due to the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

15. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Initial Class shares of the Dreyfus Variable Investment Fund—International Value Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Mercury International Value Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the Initial Class shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	Dreyfus Variable Investment Fund—International Value Portfolio (percent)	EQ/Mercury International Value Portfolio (percent)
Management Fee[6]	1.00	0.85

[3] Effective May 1, 2006, each EQAT Portfolio pays an administration fee equal to $30,000 per year, plus its pro rata portion of the Trust's asset-based administration fee, which is equal to an annual rate of 0.12% of the first $3 billion of total EQAT average daily net assets, 0.11% of the next $3 billion, 0.105% of the next $4 billion, 0.10% of the next $20 billion of total EQAT average daily net assets and 0.975% of the total EQAT average daily net assets in excess of $30 billion. Prior to that date, the administration fee for each EQAT Portfolio was equal to $30,000 per year, plus its pro rata portion of the Trust's asset-based administration fee, which was equal to an annual rate of 0.04% of the first $3 billion of total EQAT average daily net assets, 0.03% of the next $3 billion, 0.025% of the next $4 billion, and 0.0225% of the total EQAT average daily net assets in excess of $10 billion.

[4] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio, as well as the management fee schedule for each Removed Portfolio in Substitutions 2, 4, 5, 6 and 10 discussed herein, does not include breakpoints.

[5] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%.

	Dreyfus Variable Investment Fund—International Value Portfolio (percent)	EQ/Mercury International Value Portfolio (percent)
Rule 12b-1 Fee	None	None
Other Expenses	0.20	0.23
Total Annual Operating Expenses	1.20	1.08
Less Fee Waiver/Expense Reimbursement [7]	N/A	(0.08)
Net Annual Operating Expenses	1.20	1.00

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio of the Removed Portfolio due primarily to the Replacement Portfolio's lower management fee rate and an expense limitation arrangement in effect for the Replacement Portfolio. In addition, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.4 billion, while the assets of the Removed Portfolio were approximately $149.2 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due primarily to the lower management fee rate and economies of scale from the substantially larger asset base as well as the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two year expense limitation with respect to such amounts, as summarized below.

16. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Class VC shares of the Lord Abbett Series Fund—Growth and Income Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Lord Abbett Growth and Income Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the Class VC shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b-1 under the 1940 Act.

	Lord Abbett Series Fund—Growth and Income Portfolio (percent)	EQ/Lord Abbett Growth and Income Portfolio (percent)
Management Fee [8]	0.48	0.65
Rule 12b–1 Fee	None	None
Other Expenses	0.41	0.93
Total Annual Operating Expenses	0.89	.58
Less Fee Waiver/Expense Reimbursement [9]	N/A	(0.83)
Net Annual Operating Expenses	0.89	0.75

For the fiscal year ended December 31, 2005, the net annual operating expense ratio of the Replacement Portfolio was lower than the net annual operating expense ratio of the Removed Portfolio due primarily to an expense limitation arrangement in effect for the Replacement Portfolio. This arrangement more than offset the Replacement Portfolio's higher management fee rate and the higher rate of ''other expenses.'' The Class VC shares of the Removed Portfolio are not subject to any expense limit.

As of December 31, 2005, the assets of the Replacement Portfolio were approximately $38.3 million, while the assets in the Removed Portfolio were approximately $1.6 billion. Although the Replacement Portfolio is smaller than the Removed Portfolio, it is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the expense limitation arrangement in effect. In addition, after the Substitution, the Replacement Portfolio will be substantially larger,

[6] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.850% of the first $1 billion; 0.800% on the next $1 billion; 0.775% on the next $3 billion; 0.750% on the next $5 billion; and 0.725% thereafter.

[7] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 1.00%. With respect to the Removed Portfolio, the investment adviser has agreed to waive its fees and/or assume expenses of the Portfolio to the extent that the Total Annual Operating Expenses exceed 1.40% for the fiscal year ended December 31, 2006.

[8] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.650% of the first $1 billion; 0.600% on the next $1 billion; 0.575% on the next $3 billion; 0.550% on the next $5 billion; and 0.525% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.50% on the first $1 billion and 0.45% over $1 billion.

[9] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.75%.

which should enable the Portfolio to realize greater economies of scale. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts after the Substitution, MLOA and MONY also have agreed to impose a permanent expense limitation with respect to such amounts, as summarized below.

17. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the shares of the T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Short Duration Bond Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	T. Rowe Price Fixed Income Series, Inc.—Limited-Term Bond Portfolio (percent)	EQ/Short Duration Bond Portfolio (percent)
Management Fee [10]	0.70	0.45
Rule 12b–1 Fee	None	None
Other Expenses	None	0.14
Total Annual Operating Expenses	0.70	0.59
Less Fee Waiver/Expense Reimbursement [11]	N/A	N/A
Net Annual Operating Expenses	0.70	0.59

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio of the Removed Portfolio due primarily to the Replacement Portfolio's lower management fee rate. In addition, the Class IA shares of the Replacement Portfolio are subject to a 0.60% annual expense limit, while the shares of the Removed Portfolio are not subject to any expense limit. Moreover, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.3 billion, while the assets in the Removed Portfolio were approximately $86.5 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate and economies of scale from the substantially larger asset base. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

18. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the shares of the T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Money Market Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio (percent)	EQ/Money Market Portfolio (percent)
Management Fee [12]	0.55	0.34
Rule 12b–1 Fee	None	None
Other Expenses	None	0.13
Total Annual Operating Expenses	0.55	0.47
Less Fee Waiver/Expense Reimbursement	N/A	N/A

[10] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.450% of the first $750 million; 0.425% on the next $750 million; 0.400% on the next $1 billion; 0.380% on the next $2.5 billion; and 0.370% thereafter.

[11] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%.

[12] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.350% of the first $750 million; 0.325% on the next $750 million; 0.280% on the next $1 billion; 0.270% on the next $2.5 billion; and 0.250% thereafter.

	T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio (percent)	EQ/Money Market Portfolio (percent)
Net Annual Operating Expenses	0.55	0.47

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio of the Removed Portfolio due primarily to the Replacement Portfolio's lower management fee rate. In addition, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.5 billion, while the assets in the Removed Portfolio were approximately $24.1 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate and economies of scale from the substantially larger asset base. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

19. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the shares of the T. Rowe Price International Series, Inc.—International Stock Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Alliance International Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	T. Rowe Price International Series, Inc.—International Stock Portfolio (percent)	EQ/Alliance International Portfolio (percent)
Management Fee [13]	1.05	0.72
Rule 12b–1 Fee	None	None
Other Expenses	None	0.21
Total Annual Operating Expenses	1.05	0.93
Less Fee Waiver/Expense Reimbursement [14]	N/A	(0.08)
Net Annual Operating Expenses	1.05	0.85

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio of the Removed Portfolio due primarily to the Replacement Portfolio's lower management fee rate and an expense limitation arrangement in effect for the Replacement Portfolio. The Removed Portfolio is not subject to any expense limitation arrangement. In addition, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $2.3 billion, while the assets in the Removed Portfolio were approximately $467.5 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate, economies of scale from the substantially larger asset base and the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

20. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Class I shares of The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Van Kampen Emerging Markets Equity Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration

[13] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.750% of the first $1 billion; 0.700% on the next $1 billion; 0.675% on the next $3 billion; 0.650% on the next $5 billion; and 0.625% thereafter.

[14] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.85%.

fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the Class I shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	The Universal Institutional Funds, Inc.—Emerging Markets Equity Portfolio (percent)	EQ/Van Kampen Emerging Markets Equity Portfolio (percent)
Management Fee [15]	1.25	1.15
Rule 12b–1 Fee	None	None
Other Expenses	0.41	0.48
Total Annual Operating Expenses	1.66	1.63
Less Fee Waiver/Expense Reimbursement [16]	(0.01)	(0.08)
Net Annual Operating Expenses	1.65	1.55

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio of the Removed Portfolio due primarily to the Replacement Portfolio's lower management fee rate and an expense limitation arrangement in effect for the Replacement Portfolio. In addition, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.3 billion, while the assets in the Removed Portfolio were approximately $740.0 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate, economies of scale from the substantially larger asset base and the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

21. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the shares of the Old Mutual Insurance Series Fund__Mid-Cap Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/FI Mid Cap Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	Old Mutual Insurance Series Fund—Mid-Cap Portfolio (percent)	EQ/FI Mid Cap Portfolio (percent)
Management Fee [17]	0.95	0.69
Rule 12b–1 Fee	None	None
Other Expenses	0.22	0.14
Total Annual Operating Expenses	1.17	0.83
Less Fee Waiver/Expense Reimbursement [18]	(0.18)	(0.08)
Net Annual Operating Expenses	0.99	0.75

For the fiscal year ended December 31, 2005, the annual operating expense

[15] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 1.150% of the first $1 billion; 1.100% on the next $1 billion; 1.075% on the next $3 billion; 1.050% on the next $5 billion; and 1.025% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 1.25% of the first $500 million; 1.20% from $500 million to $1 billion; 1.15% from $1 billion to $2.5 billion; and 1.00% thereafter.

[16] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 1.55%. With respect to the Removed Portfolio, the investment adviser has agreed to reduce its advisory fee and/or reimburse the Portfolio to the extent that the Total Annual Operating Expenses exceed 1.65% for the fiscal year ended December 31, 2006.

[17] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.65% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.950% of the first $300 million; 0.900% from $300 million to $500 million; 0.850% from $500 million to $750 million; 0.800% from $750 million to $1 billion; 0.750% from $1 billion to $1.5 billion; 0.700% from $1.5 billion to $2.0 billion; and 0.65% thereafter.

[18] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.75%. With respect to the Removed Portfolio, the investment adviser

Continued

ratio for the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio for the Removed Portfolio due to a lower management fee rate and a lower rate of ''other expenses.'' In addition, the Class IA shares of the Replacement Portfolio are subject to a 0.75 annual expense limit, while the shares of the Removed Portfolio are subject to a 0.99 fee cap. Moreover, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.4 billion, while the assets in the Removed Portfolio were approximately $54.8 million.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate, the lower rate of other expenses, economies of scale from the substantially larger asset base and the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

22. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Class VC shares of the Lord Abbett Series Fund—Mid-Cap Value Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/Lord Abbett Mid Cap Value Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the Class VC shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	Lord Abbett Series Fund—Mid-Cap Value Portfolio (percent)	EQ/Lord Abbett Mid Cap Value Portfolio (percent)
Management Fee [19]	0.74	0.70
Rule 12b–1 Fee	None	None
Other Expenses	0.38	0.40
Total Annual Operating Expenses	1.12	1.10
Less Fee Waiver/Expense Reimbursement [20]	N/A	(0.30)
Net Annual Operating Expenses	1.12	0.80

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio (before and after waivers and reimbursements) was lower than the annual operating expense ratio for the Removed Portfolio due primarily to the lower management fee rate for the Replacement Portfolio and an expense limitation arrangement in effect for the Replacement Portfolio.

As of December 31, 2005, the assets of the Replacement Portfolio were approximately $123.6 million, while the assets in the Removed Portfolio were approximately $1.2 billion. Although the Replacement Portfolio is smaller than the Removed Portfolio, it is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due to the lower management fee rate and the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts for a period of two years after the Substitution, MLOA and MONY also have agreed to impose a two-year expense limitation with respect to such amounts, as summarized below.

23. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Administrative Class shares of the PIMCO Variable Insurance Trust—Real Return Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class IA shares of the EQ/JPMorgan Core Bond Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). The total annual operating expenses of the Replacement Portfolio have been restated to reflect recent changes to the administration fees charged with respect to that Portfolio (as described above). Class IA shares of the Replacement Portfolio and the Administrative Class shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

has contractually agreed to waive a portion of its management fee or to pay certain expenses of the Portfolio to the extent that the Total Annual Operating Expenses exceed 0.99% for the fiscal year ended December 31, 2006.

[19] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.700% of the first $1 billion; 0.650% on the next $1 billion; 0.625% on the next $3 billion; 0.600% on the next $5 billion; and 0.575% thereafter. The management fee schedule for the Removed Portfolio on an annual basis is equal to 0.75% of the $1 billion; 0.70% on the next $1 billion; and 0.65% over $2 billion.

[20] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.80%.

	PIMCO Variable Insurance Trust—Real Return Portfolio (percent)	EQ/JPMorgan Core Bond Portfolio (percent)
Management Fee [21]	0.25	0.44
Rule 12b–1 Fee	None	None
Other Expenses	0.41	0.13
Total Annual Operating Expenses	0.66	0.57
Less Fee Waiver/Expense Reimbursement [22]	N/A	N/A
Net Annual Operating Expenses	0.66	0.57

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio was lower than the annual operating expense ratio of the Removed Portfolio, even though the management fee rate for the Replacement Portfolio was higher than the Removed Portfolio's management fee rate. The lower total annual operating expense ratio of the Replacement Portfolio was due primarily to the Portfolio's lower rate of ''other expenses.'' In addition, the Class IA shares of the Replacement Portfolio are subject to a 0.60% annual expense limit, while the Administrative Class shares of the Removed Portfolio are not subject to any expense limit. Moreover, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.4 billion, while the assets in the Removed Portfolio were approximately $1.1 billion.

It is anticipated that the Replacement Portfolio's net annual operating expense ratio will be lower than the Removed Portfolio's net annual operating expense ratio immediately after the Substitution due primarily to the lower rate of ''other expenses'' due to economies of scale as well as the expense limitation arrangement in effect. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts after the Substitution, MLOA and MONY also have agreed to impose a permanent expense limitation with respect to such amounts, as summarized below.

24. The following chart compares the fees paid for advisory services and the total annual operating expenses (before and after any waivers and reimbursements) for the fiscal year ended December 31, 2005, expressed as an annual percentage of average daily net assets, of the Class VC shares of the Lord Abbett Series Fund—Bond-Debenture Portfolio (the ''Removed Portfolio'' for purposes of this discussion) and the Class A shares of the AXA Premier VIP High Yield Portfolio (the ''Replacement Portfolio'' for purposes of this discussion). Class A shares of the Replacement Portfolio and the Class VC shares of the Removed Portfolio have not adopted plans pursuant to Rule 12b–1 under the 1940 Act.

	Lord Abbett Series Fund—Bond-Debenture Portfolio (percent)	AXA Premier VIP High Yield Portfolio (percent)
Management Fee [23]	0.50	0.58
Rule 12b–1 Fee	None	None
Other Expenses [24]	0.44	0.18
Total Annual Operating Expenses	0.94	0.76
Less Fee Waiver/Expense Reimbursement	(0.04)	N/A
Net Annual Operating Expenses	0.90	0.76

For the fiscal year ended December 31, 2005, the annual operating expense ratio of the Replacement Portfolio was lower than the annual operating expense ratio of the Removed Portfolio (before and after waivers and reimbursements), even though the management fee rate for the Replacement Portfolio was higher than the Removed Portfolio's management fee rate. The lower annual operating expense ratio was due primarily to the Replacement Portfolio's lower rate of ''other expenses.'' In addition, as of December 31, 2005, the assets of the Replacement Portfolio were approximately $1.8 billion, while the assets in the Removed Portfolio were approximately $212.3 million.

It is anticipated that the Replacement Portfolio's total annual operating expense ratio will be lower than the Removed Portfolio's total annual operating expense ratio immediately

[21] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.450% of the first $750 million; 0.425% on the next $750 million; 0.400% on the next $1 billion; 0.380% on the next $2.5 billion; and 0.370% thereafter.

[22] The Manager of the Replacement Portfolio has agreed to make payments or waive its management, administrative and other fees to limit the expenses of the Portfolio through April 30, 2007, pursuant to an expense limitation agreement, so that the Total Annual Operating Expenses of the Class IA shares of the Portfolio do not exceed 0.60%.

[23] The management fee schedule for the Replacement Portfolio on an annual basis is equal to 0.600% of the first $750 million; 0.575% on the next $750 million; 0.550% on the next $1 billion; 0.530% on the next $2.5 billion; and 0.520% thereafter. The management fee schedule for the Removed Portfolio on an annual basis, as of January 1, 2006, is equal to 0.50% of the first $1 billion; and 0.45% thereafter. However, the management fee rate for the fiscal year ended December 31, 2005, as reflected in the total annual operating expenses table above, was 0.50% and did not include breakpoints.

[24] With respect to the Removed Portfolio, the investment adviser has contractually agreed through April 30, 2007 to reimburse a portion of the Portfolio's expenses to maintain its ''Other Expenses'' at an annualized rate of 0.40%.

after the Substitution, notwithstanding the difference in the management fee rates, due primarily to the lower rate of other expenses as a result of economies of scale attributable to the Replacement Portfolio's substantially larger asset base. The Section 26 Applicants assert that the proposed Substitution of the Replacement Portfolio for the Removed Portfolio will therefore benefit the Contract owners by lowering the annual operating expense ratio. To ensure that Contract owners with amounts allocated to the Removed Portfolio on the date of the Substitution do not incur higher expenses with respect to such amounts after the Substitution, MLOA and MONY also have agreed to impose a permanent expense limitation with respect to such amounts, as summarized below.

25. Appendix A describes each proposed substitution with respect to each portfolio's comparative performance history. Information regarding the average annual total returns of each Replacement and Removed Portfolio for the one-, five- and ten-year periods (or since inception, if shorter) ended December 31, 2005 is included in the Appendix.

26. By supplements to the prospectuses for the Contracts and Separate Accounts which will be delivered to Contract owners at least thirty (30) days before the Substitutions, each Insurance Company will notify all Contract owners of its intention to take the necessary actions, including seeking the order requested by the Application, to substitute shares of the Replacement Portfolios for the Removed Portfolios as described in this notice. The supplements will advise Contract owners that from the date of the supplement until the date of the proposed Substitutions, owners are permitted to make transfers of Contract value (or annuity unit value) out of each Removed Portfolio subaccount to one or more other subaccounts without the transfers (or exchanges) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge. The supplements also will inform Contract owners that the Insurance Companies will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after each proposed Substitution (other than with respect to implementing policies and procedures designed to prevent disruptive transfer and other market timing activity). The supplements also will advise Contract owners how to provide instructions on reallocating Contract value in light of the proposed Substitutions. In addition, the supplements will advise Contract owners that any Contract value remaining in a Removed Portfolio subaccount on the Substitution Date will be transferred to the corresponding Replacement Portfolio subaccount and that the Substitutions will take place at relative net asset value. The supplements will also advise Contract owners that for at least 30 days following each proposed Substitution, the Insurance Companies will permit Contract owners to make transfers of Contract value (or annuity unit value) out of each Replacement Portfolio subaccount to one or more other subaccounts without the transfers (or exchanges) being treated as one of a limited number of permitted transfers (or exchanges) or a limited number of transfers (or exchanges) permitted without a transfer charge, as applicable.

27. Each Insurance Company also will send affected Contract owners prospectuses for the Replacement Portfolio prior to the Substitutions. Also the Section 26 Applicants will send the appropriate prospectus supplement (or other notice, in the case of Contracts no longer actively marketed and for which there are a relatively small number of existing Contract owners (''Inactive Contracts'')), containing this disclosure to all existing Contract owners. Prospective purchasers and new purchasers of Contracts will be provided with a Contract prospectus and the supplement containing disclosure regarding the Substitutions, as well as a prospectus and/or supplement for the Replacement Portfolios. Applicants represent that the Contract prospectus and the supplement and the prospectus and/or supplement for the Replacement Portfolios will be delivered to purchasers of new Contracts in accordance with all applicable legal requirements.

28. In addition to the prospectus supplements distributed to Contract owners, within five business days after the proposed Substitutions are completed, Contract owners will be sent a written notice of the Substitutions informing them that each Substitution was carried out and that they may transfer all Contract value or cash value under a Contract invested in any one of the subaccounts on the date of the notice to one or more other subaccounts available under their Contract at no cost and without regard to the usual limit on the frequency of transfers among the variable account options. The notice will also reiterate that (other than with respect to implementing policies and procedures designed to prevent disruptive transfers and other market timing activity) each Insurance Company will not exercise any rights reserved by it under the Contracts to impose additional restrictions on transfers or to impose any charges on transfers until at least 30 days after each proposed Substitution. The Insurance Companies will also send each Contract owner a current prospectus for each of the relevant Replacement Portfolios to the extent they have not previously received a current version. Each Insurance Company also is seeking approval of the proposed Substitutions from any state insurance regulators whose approval may be necessary or appropriate.

29. The proposed Substitutions will take place at relative net asset value determined on the date of the Substitutions pursuant to Section 22 of the 1940 Act and Rule 22c–1 thereunder, with no change in the amount of any Contract owner's Contract value, cash value, or death benefit or in the dollar value of his or her investment in the Separate Accounts. Each Substitution will be effected by redeeming shares of the Removed Portfolio in cash and/or in-kind on the Substitution Date at their net asset value and using the proceeds of those redemptions to purchase shares of the Replacement Portfolio at their net asset value on the same date. All in-kind redemptions from a Removed Portfolio of which any of the Applicants is an affiliated person will be effected in accordance with the conditions set forth in the no-action letter issued by the staff of the Commission to Signature Financial Group, Inc. (Dec. 28, 1999).

30. Contract owners will not incur any fees or charges as a result of the proposed Substitutions, nor will their rights or insurance benefits or the Insurance Companies' obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed Substitutions, including any brokerage, legal, accounting, and other fees and expenses, will be paid by the Insurance Companies. In addition, the proposed Substitutions will not impose any tax liability on Contract owners. The proposed Substitutions will not cause the Contract fees and charges currently being paid by Contract owners to be greater after the proposed Substitutions than before the proposed Substitutions. All Contract-level fees will remain the same after the proposed Substitutions. No fees will be charged on the transfers made at the time of the proposed Substitutions because each proposed Substitution will not be treated as a transfer for purposes of assessing transfer charges or computing

the number of permissible transfers under the Contracts.

31. With respect to those who were Contract owners on the date of the proposed Substitutions, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) during the two years following the date of the proposed Substitutions, the subaccounts investing in the Replacement Portfolios such that the sum of each Replacements Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculations of subaccount unit value) for such period will not exceed, on an annualized basis, the sum of the corresponding Removed Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio for fiscal year 2005, except for the Substitutions involving the Lord Abbett Series Fund—Growth and Income Portfolio, PIMCO Variable Insurance Trust—Real Return Portfolio and Lord Abbett Series Fund—Bond-Debenture Portfolio. With respect to the Lord Abbett Series Fund—Growth and Income Portfolio, PIMCO Variable Insurance Trust—Real Return Portfolio and Lord Abbett Series Fund—Bond-Debenture Portfolio, the Insurance Companies will reimburse, on the last business day of each fiscal period (not to exceed a fiscal quarter) for the life of each Contract outstanding on the date of the proposed Substitutions, the subaccounts investing in the Replacement Portfolios such that the sum of each Replacement Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio (asset-based fees and charges deducted on a daily basis from subaccount assets and reflected in the calculations of subaccount unit value) for such period will not exceed, on an annualized basis, the sum of the corresponding Removed Portfolio's net operating expense ratio (taking into account any expense waivers or reimbursements) and subaccount expense ratio for fiscal year 2005.

32. For a period of two years from the date of each proposed Substitution, except the Substitutions involving the Lord Abbett Series Fund—Growth and Income Portfolio, PIMCO Variable Insurance Trust—Real Return Portfolio and Lord Abbett Series Fund—Bond-Debenture Portfolio, the Insurance Companies will not increase total Separate Account charges (net of any waivers or reimbursements) for any existing owner of the Contracts on the date of the proposed Substitutions. With respect to the Lord Abbett Series Fund—Growth and Income Portfolio, PIMCO Variable Insurance Trust—Real Return Portfolio and Lord Abbett Series Fund—Bond-Debenture Portfolio, at no time after the date of the proposed Substitutions will the Insurance Companies increase the total Separate Account charges (net of any waiver or reimbursements) of each Contract outstanding on the date of the proposed Substitutions.

Applicants' Legal Analysis

1. Section 26(c) of the 1940 Act prohibits the depositor of a registered unit investment trust that invests in the securities of a single issuer from substituting the securities of another issuer without Commission approval. Section 26(c) provides that ''[t]he Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.'' Section 26(c) protects the expectation of investors that the unit investment trust will accumulate shares of a particular issuer and is intended to ensure that unnecessary or burdensome sales loads, additional reinvestment costs and other charges will not be incurred due to unapproved substitutions of securities.

2. The proposed Substitutions involve a substitution of securities within the meaning of Section 26(c) of the 1940 Act. The Section 26 Applicants, therefore, request an order from the Commission pursuant to Section 26(c) approving the proposed Substitutions.

3. The Section 26 Applicants have reserved the right under the Contracts to substitute shares of another eligible investment fund for one of the current investment funds offered as a funding option under the Contracts. The prospectuses for the Contracts and the Separate Accounts contain appropriate disclosure of this right. The Section 26 Applicants have reserved this right of substitution both to protect themselves and their Contract owners in situations where either might be harmed or disadvantaged by events affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit the Insurance Companies and their respective Contract owners.

4. Applicants assert that each Replacement Portfolio and its corresponding Removed Portfolio have similar, and in some cases substantially similar or identical, investment objectives, policies and risks. In addition, the proposed Substitutions retain for Contract owners the investment flexibility that is a central feature of the Contracts. According to the Applicants, any impact on the investment programs of affected Contract owners, including the appropriateness of the available investment options, should therefore be negligible.

5. Applicants maintain that the ultimate effect of each Substitution would be to remove overlapping and duplicative investment options and that each Substitution will permit each Insurance Company to present information to its Contract owners in a simpler and more concise manner. Applicants anticipate that after each proposed Substitution, Contract owners will be provided with disclosure documents that contain a simpler presentation of the available investment options under their Contracts.

6. Applicants also state that, as a result of each proposed Substitution, Contract owners with subaccount balances invested in each Replacement Portfolio will have lower net operating expenses. Each Insurance Company has agreed to impose a two year expense limit, except with respect to the proposed Substitutions involving the Lord Abbett Series Fund—Growth and Income Portfolio, PIMCO Variable Insurance Trust—Real Return Portfolio and Lord Abbett Series Fund—Bond-Debenture Portfolio for which each Insurance Company has agreed to impose an expense limit for the life of each Contract, so that the sum of each Replacement Portfolio's net operating expense ratio (taking into account any expense waivers and reimbursements) and subaccount expense ratio (asset-based charges deducted on a daily basis from subaccount assets and reflected in the calculation of subaccount unit values) for each fiscal period (not to exceed a fiscal quarter) will not exceed, on an annualized basis, the sum of the corresponding Removed Portfolio's net operating expense ratio and subaccount expense ratio for fiscal year 2005.

7. Applicants contend that, therefore, each Substitution protects the Contract owners who have allocated Contract value to each Removed Portfolio by: (i) Providing an underlying investment option for subaccounts invested in the Removed Portfolio that is similar to the Removed Portfolio; (ii) providing such Contract owners with simpler disclosure documents; and (iii) providing such Contract owners with an investment option that would have net operating

expenses that are lower than the current investment option.

8. Applicants assert that the proposed Substitutions are not of the type that Section 26(c) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute investment securities in a manner which permanently affected all the investors in the trust, the Contracts provide each Contract owner with the right to exercise his or her own judgment, and transfer Contract values and cash values into and among other investment options available to Contract owners under their Contracts. Additionally, the Section 26 Applicants claim that the Substitutions will not, in any manner, reduce the nature or quality of the available investment options. Moreover, the Section 26 Applicants will offer Contract owners the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty that may otherwise have been imposed for a period beginning on the date of the supplement notifying Contract owners of the proposed Substitutions (which supplement will be delivered to Contract owners at least thirty (30) days before the Substitutions) and ending no earlier than thirty (30) days after the Substitution Date. The Substitutions, therefore, will not result in the type of costly forced redemption that Section 26(c) was designed to prevent.

9. Applicants maintain that the proposed Substitutions are also unlike the type of substitution that Section 26(c) was designed to prevent in that by purchasing a Contract, Contract owners select much more than a particular underlying fund in which to invest their Contract values. They also select the specific type of insurance coverage offered by the Section 26 Applicants under the applicable Contract, as well as numerous other rights and privileges set forth in the Contract. Contract owners also may have considered the Insurance Company's size, financial condition, and its reputation for service in selecting their Contract. These factors will not change as a result of the proposed Substitution.

10. Section 17(a)(1) of the 1940 Act prohibits any affiliated person (as defined in Section 2(a)(3) of the 1940 Act) of a registered investment company, or any affiliated person of such a person, acting as principal, from knowingly selling any security or other property to that company. Section 17(a)(2) of the 1940 Act generally prohibits the same persons, acting as principals, from knowingly purchasing any security or other property from the registered investment company.

11. The Section 17 Applicants state that shares held by a separate account of an insurance company are legally owned by the insurance company and that, the Insurance Companies and their affiliates collectively own substantially all of the shares of EQAT. Accordingly, EQAT and its respective Portfolios are arguably under the control of the Insurance Companies, notwithstanding the fact that the Contract owners may be considered the beneficial owners of those shares held in the Separate Accounts. If EQAT is under the common control of the Insurance Companies, then each Insurance Company is an affiliated person or an affiliated person of an affiliated person of EQAT and its respective Portfolios. If EQAT and its respective Portfolios are under the control of the Insurance Companies, then EQAT and its respective affiliates are affiliated persons of the Insurance Companies.

12. The Section 17 Applicants note that, regardless of whether or not the Insurance Companies can be considered to control EQAT and its respective Portfolios, because the Insurance Companies and their affiliates own of record more than 5% of the shares of each of them and are under common control with each Replacement Portfolio's investment adviser, the Insurance Companies are affiliated persons of EQAT and its respective Portfolios. Likewise, EQAT's respective Portfolios are each an affiliated person of the Insurance Companies.

13. In addition to the above, the Insurance Companies, through their respective Separate Accounts, in the aggregate own more than 5% of the outstanding shares of certain of the Removed Portfolios, including the Dreyfus Variable Investment Fund—International Value Portfolio, Lord Abbett Series Fund—Bond-Debenture Portfolio, T. Rowe Price Fixed Income Series, Inc.—Prime Reserve Portfolio, Old Mutual Insurance Series Fund—Mid-Cap Portfolio and PIMCO Variable Insurance Trust—Real Return Portfolio. Therefore, each Insurance Company is an affiliated person of those portfolios.

14. The Section 17 Applicants state that the proposed In-Kind Transactions could be seen as the indirect purchase of shares of certain Replacement Portfolios with portfolio securities of certain Removed Portfolios and the indirect sale of portfolio securities of certain Removed Portfolios for shares of certain Replacement Portfolios. Pursuant to this analysis, the proposed In-Kind Transactions also could be categorized as a purchase of shares of certain Replacement Portfolios by certain Removed Portfolios, acting as principal, and a sale of portfolio securities by certain Removed Portfolios, acting as principal, to certain Replacement Portfolios. In addition, the proposed In-Kind Transactions could be viewed as a purchase of securities from certain Removed Portfolios, and a sale of securities to certain Replacement Portfolios, by MONY or MLOA (or their Separate Accounts), acting as principal. If categorized in this manner, the proposed In-Kind Transactions may be deemed to contravene Section 17(a) due to the affiliated status of these participants.

15. Rule 17a–7 under the 1940 Act exempts from the prohibitions of Section 17(a), subject to certain enumerated conditions, a purchase or sale transaction between registered investment companies or separate series of registered investment companies, which are affiliated persons, or affiliated persons of affiliated persons, of each other, between separate series of a registered investment company, or between a registered investment company or a separate series of a registered investment company and a person which is an affiliated person of such registered investment company (or affiliated person of such person) solely by reason of having a common investment adviser or investment advisers which are affiliated persons of each other, common directors, and/or common officers.

16. MONY, MLOA, their Separate Accounts, certain Removed Portfolios, and certain Replacement Portfolios, in connection with their participation in the proposed In-Kind Transactions, must rely on that portion of Rule 17a–7 that requires that they be affiliated persons of each other solely by reason of having a common investment adviser or affiliated investment advisers, common directors, and/or common officers. That is not the case as detailed above. Moreover, one of the conditions enumerated in Rule 17a–7 requires that the transaction be a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available. If the proposed In-Kind Transactions are viewed as purchases and sales of securities, the consideration in the proposed redemptions of shares of certain Removed Portfolios and the proposed purchases of shares of certain Replacement Portfolios would not be cash, but would be the portfolio securities received from the Removed Portfolio.

17. Section 17(b) of the 1940 Act provides that the Commission may, upon application, issue an order

exempting any proposed transaction from Section 17(a) if: (i) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transactions are consistent with the policy of each registered investment company concerned; and (iii) the proposed transactions are consistent with the general purposes of the 1940 Act.

18. The Section 17 Applicants request an order pursuant to Section 17(b) of the 1940 Act exempting them from the provisions of Section 17(a) to the extent necessary to permit them to carry out the In-Kind Transactions in connection with the proposed Substitutions.

19. The Section 17 Applicants submit that the terms of the proposed In-Kind Transactions, including the consideration to be paid and received are reasonable and fair and do not involve overreaching on the part of any person concerned. The Section 17 Applicants also submit that the proposed In-Kind Transactions are consistent with the policies of the relevant Removed Portfolios and the relevant corresponding Replacement Portfolios, as recited in the current registration statement and reports of the relevant investment company filed with the Commission under the federal securities laws. Finally, the Section 17 Applicants submit that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act.

20. The Section 17 Applicants state that they will assure themselves that the investment companies will carry out the proposed In-Kind Transactions in conformity with the conditions of Rule 17a–7 (or, as applicable, a Removed Portfolio's and a Replacement Portfolio's normal valuation procedures, as set forth in the relevant investment company's registration statement), except that the consideration paid for the securities being purchased or sold will not be cash. The In-Kind Transactions will be effected at the respective net asset values of each Removed Portfolio and the corresponding Replacement Portfolio, as determined in accordance with the procedures disclosed in the Portfolios' registration statements and as required by Rule 22c–1 under the 1940 Act. The In-Kind Transactions will not change the dollar value of any Contract owner's investment in any of the Separate Accounts, the value of any Contract, the accumulation value or other value credited to any Contract, or the death benefit payable under any Contract. After the proposed In-Kind Transactions, the value of a Separate Account's investment in a Replacement Portfolio will equal the value of its investments in the Removed Portfolio (together with the value of any pre-existing investments in the Replacement Portfolio) before the In-Kind Transactions.

21. When the Commission initially proposed and adopted Rule 17a–7, it noted that the purpose of the rule was to eliminate the filing and processing of applications ''in circumstances where there appears to be no likelihood that the statutory finding for a specific exemption under Section 17(b) could not be made'' by establishing ''conditions as to the availability of the exemption to those situations where the Commission, upon the basis of its experience, considers that there is no likelihood of overreaching of the investment companies participating in the transaction.'' When the Commission amended Rule 17a–7 in 1981 to cover transactions involving non-investment company affiliates, it indicated that such transactions could be reasonable and fair and not involve overreaching if appropriate conditions were imposed on the transaction. In this regard, the Section 17 Applicants state they will assure themselves that the In-Kind Transactions will be in substantial compliance with the conditions of Rule 17a–7 under the 1940 Act. The Section 17 Applicants assert that because the proposed In-Kind Transactions would comply in substance with the principal conditions of Rule 17a–7, the Commission should consider the extent to which the In-Kind Transactions would meet these or other similar conditions and issue an order if such conditions would provide the substance of the protections embodied in Rule 17a–7.

22. The Section 17 Applicants state that the proposed In-Kind Transactions will be effected based upon the independent current market price of the portfolio securities as specified in paragraph (b) of Rule 17a–7. The proposed In-Kind Transactions will comply with paragraph (d) of Rule 17a–7 because no brokerage commission, fee or other remuneration (except for any customary transfer fees) will be paid to any party in connection with the proposed In-Kind Transactions. Furthermore, a written record of the proposed In-Kind Transactions will be maintained and preserved in accordance with paragraph (g) of Rule 17a–7. With respect to those securities for which market quotations are not readily available, the Substitutions will be effected in accordance with the relevant Removed Portfolios' and the relevant corresponding Replacement Portfolios' normal valuation procedures, as set forth in the registration statement for the relevant investment company.

23. Even though the proposed In-Kind Transactions will not comply with the cash consideration requirement of paragraph (a) of Rule 17a–7, the Section 17 Applicants state that the terms of the proposed In-Kind Transactions will offer to each of the relevant Removed Portfolios and each of the relevant Replacement Portfolios the same degree of protection from overreaching that Rule 17a–7 generally provides in connection with the purchase and sale of securities under that Rule in the ordinary course of business. In particular, the Insurance Companies and their affiliates cannot effect the proposed In-Kind Transactions at a price that is disadvantageous to any Replacement Portfolio.

24. The Section 17 Applicants represent that the proposed redemption of shares of each of the relevant Removed Portfolios will be consistent with the investment policies of each Removed Portfolio and the corresponding Replacement Portfolio, as recited in their respective current registration statements, provided that the shares are redeemed at their net asset value in conformity with Rule 22c–1 under the 1940 Act. Likewise, the proposed sale of shares of each of the relevant Replacement Portfolios for investment securities is consistent with the investment policies of the relevant Replacement Portfolio, as recited in the relevant Trust's registration statement, provided that: (i) The shares are sold at their net asset value; and (ii) the investment securities are of the type and quality that a Replacement Portfolio could have acquired with the proceeds from the sale of its shares had the shares been sold for cash. To assure the second of these conditions is met, the Manager and relevant Adviser will examine the portfolio securities being offered to each Replacement Portfolio and accept only those securities as consideration for shares that it would have acquired for each such Portfolio in a cash transaction.

25. Applicants also assert that the proposed In-Kind Transactions are consistent with the general purposes of the 1940 Act and that the proposed In-Kind Transactions do not present any conditions or abuses that the 1940 Act was designed to prevent. In particular, Sections 1(b)(2) and 1(b)(3) of the 1940 Act state, among other things, that the national public interest and the interest of investors are adversely affected ''when investment companies are organized, operated, managed, or their portfolio securities are selected in the

interest of directors, officers, investment advisers, depositors, or other affiliated persons thereof, * * * or in the interest of other investment companies or persons engaged in other lines of business, rather than in the interest of all classes of such companies' security holders; * * * when investment companies issue securities containing inequitable or discriminatory provisions, or fail to protect the preferences and privileges of holders in their outstanding securities.'' As explained above, the terms of the proposed In-Kind Transactions are designed to prevent the abuses described in Sections 1(b)(2) and 1(b)(3) of the 1940 Act.

26. The Section 17 Applicants submit that, for all the reasons stated above, the terms of the proposed In-Kind Transactions as set forth in the Application, including the consideration to be paid and received, are reasonable and fair to: (i) Each of the relevant Replacement Portfolios and each of the relevant Removed Portfolios; and (ii) Contract owners. The Section 17 Applicants also assert that the proposed In-Kind Transactions do not involve overreaching on the part of any person concerned. Furthermore, the Section 17 Applicants represent that the proposed In-Kind Transactions are, or will be, consistent with all relevant policies of (i) the relevant Replacement Portfolios and the relevant Removed Portfolios as stated in the relevant investment company's registration statement and reports filed under the 1940 Act, and (ii) the general purposes of the 1940 Act.

Conclusion

For the reasons set forth in the Application, the Section 26 Applicants and the Section 17 Applicants respectively state that the proposed Substitutions and the related In-Kind Transactions meet the standards of Section 26(c) of the 1940 Act and of Section 17(b) of the 1940 Act, and request that the Commission issue an order of approval pursuant to Section 26(c) of the 1940 Act and an order of exemption pursuant to Section 17(b) of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

Appendix A

The charts below compare the average annual total returns of the Class IA shares of each Replacement Portfolio and relevant class of shares (as indicated below) of each Removed Portfolio for the one-, five- and ten-year or since inception periods ended December 31, 2005.

1.—THE DREYFUS SOCIALLY RESPONSIBLE GROWTH FUND, INC. (INITIAL CLASS SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/CALVERT SOCIALLY RESPONSIBLE PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio Periods Ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Replacement Portfolio	8.92	(2.00)	(0.87)
Russell 1000 Growth Index	5.26	(3.58)	(3.74)
Russell 3000 Index[25]	6.12	1.58	1.86
Removed Portfolio	3.62	(5.27)	5.93
S&P 500	4.91	0.54	9.07

* The Replacement Portfolio commenced operations on September 1, 1999. The Removed Portfolio commenced operations on December 31, 2000.

2.—DREYFUS VARIABLE INVESTMENT FUND—INTERNATIONAL VALUE PORTFOLIO (INITIAL CLASS SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/MERCURY INTERNATIONAL VALUE PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Replacement Portfolio	11.07	2.46	8.80
MSCI EAFE Index	13.54	4.55	6.17
Removed Portfolio	11.89	6.88	7.97
MSCI EAFE Index	13.54	4.55	5.42

* The Replacement Portfolio commenced operations on March 25, 2002. The Removed Portfolio commenced operations on May 1, 1996.

3.—LORD ABBETT SERIES FUND—GROWTH AND INCOME PORTFOLIO (CLASS VC SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/LORD ABBETT GROWTH AND INCOME PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')**

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years* (percent)
Removed Portfolio	3.25	3.10	10.22

[25] Replaced November 30, 2005.

3.—LORD ABBETT SERIES FUND—GROWTH AND INCOME PORTFOLIO (CLASS VC SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/LORD ABBETT GROWTH AND INCOME PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')**—Continued

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years* (percent)
S&P 500	4.91	0.54	9.07

* The Removed Portfolio commenced operations on December 11, 1989.
** The inception date for the Replacement Portfolio is April 29, 2005 and, therefore, the Portfolio does not have performance information for a full fiscal year.

4.—T. ROWE PRICE FIXED INCOME SERIES, INC.—LIMITED-TERM BOND PORTFOLIO (''REMOVED PORTFOLIO'') REPLACED BY EQ/SHORT DURATION BOND PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years or since inception* (percent)
Replacement Portfolio	1.38	N/A	1.58
Lehman 1–3 Year Government Credit Index	1.77	N/A	1.72
Removed Portfolio	1.74	4.17	4.80
Merrill Lynch 1–5 Year U.S. Corporate and Government Index	1.44	4.63	5.35

* The predecessor of the Replacement Portfolio, the Enterprise Short Duration Portfolio, commenced operations on May 1, 2003. The assets of the Enterprise Short Duration Portfolio were transferred to the Replacement Portfolio on July 9, 2004. The Removed Portfolio commenced operations on May 13, 1994.

5.—T. ROWE PRICE FIXED INCOME SERIES, INC.—PRIME RESERVE PORTFOLIO (''REMOVED PORTFOLIO'') REPLACED BY EQ/MONEY MARKET PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years or since inception* (percent
Replacement Portfolio	2.85	2.00	3.72
3-Month Treasury Bill	3.07	2.34	3.85
Removed Portfolio	2.79	1.96	3.48
Lipper Variable Annuity Underlying Money Market Funds Average	2.69	1.85	3.38

*The predecessor of the Replacement Portfolio, the HRT/Alliance Money Market Portfolio, commenced operations on July 13, 1981. The assets of the HRT/Alliance Money Market Portfolio were transferred to the Replacement Portfolio on October 18, 1999. The Removed Portfolio commenced operations on December 31, 1996.

6.—T. ROWE PRICE INTERNATIONAL SERIES, INC.—INTERNATIONAL STOCK PORTFOLIO (''REMOVED PORTFOLIO'') REPLACED BY EQ/ALLIANCE INTERNATIONAL PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years* (percent)
Replacement Portfolio	15.61	5.20	4.87
MSCI EAFE Index	13.54	4.55	5.84
Removed Portfolio	16.03	1.84	5.09
MSCI EAFE Index	14.02	4.94	6.18

*The predecessor of the Replacement Portfolio, the HRT/Alliance International Portfolio, commenced operations on April 3, 1995. The assets of the HRT/Alliance International Portfolio were transferred to the Replacement Portfolio on October 18, 1999. The Removed Portfolio commenced operations on March 31, 1994.

7.—THE UNIVERSAL INSTITUTIONAL FUNDS, INC.—EMERGING MARKETS EQUITY PORTFOLIO (CLASS I SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/VAN KAMPEN EMERGING MARKETS EQUITY PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Replacement Portfolio	33.04	17.97	5.48
MSCI EMF Gross Dividend Index	34.54	19.44	7.13
Removed Portfolio	33.85	16.01	6.95
MSCI Emerging Markets Free Net Index	34.00	19.09	6.62

* The Replacement Portfolio commenced operations on August 20, 1997. The Removed Portfolio commenced operations on October 1, 1996.

8.—OLD MUTUAL INSURANCE SERIES FUND—MID-CAP PORTFOLIO (''REMOVED PORTFOLIO'') REPLACED BY EQ/FI MID CAP PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Replacement Portfolio	6.63	4.58	4.38
S&P MidCap 400 Index	12.56	8.60	6.91
Removed Portfolio	5.71	8.18	14.78
S&P MidCap 400 Index	10.26	6.52	11.35

* The Replacement Portfolio commenced operations on September 1, 2000. The Removed Portfolio commenced operations on November 30, 1998.

9.—LORD ABBETT SERIES FUND—MID-CAP VALUE PORTFOLIO (CLASS VC SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/LORD ABBETT MID CAP VALUE PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')**

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Removed Portfolio	8.22	10.30	15.34
Russell MidCap Value Index	12.65	12.21	12.50

* The Removed Portfolio commenced operations on September 15, 1999.
** The inception date for the Replacement Portfolio is April 29, 2005 and, therefore, the Portfolio does not have performance information for a full fiscal year.

10.—PIMCO VARIABLE INSURANCE TRUST—REAL RETURN PORTFOLIO (ADMINISTRATIVE CLASS SHARES) (''REMOVED PORTFOLIO'') REPLACED BY EQ/JPMORGAN CORE BOND PORTFOLIO (CLASS IA SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	Since inception* (percent)
Replacement Portfolio	2.50	5.41	5.69
Lehman Brothers Aggregate Bond Index	2.43	5.87	6.06
Removed Portfolio	2.09	9.34	9.68
Lehman Brothers U.S. TIPS Index	2.84	8.74	9.07

* The Replacement Portfolio commenced operations on January 1, 1998. The Removed Portfolio commenced operations on September 30, 1999.

11.—LORD ABBETT SERIES FUND—BOND-DEBENTURE PORTFOLIO (CLASS VC SHARES) (''REMOVED PORTFOLIO'') REPLACED BY AXA PREMIER VIP HIGH YIELD PORTFOLIO (CLASS A SHARES) (''REPLACEMENT PORTFOLIO'')

Portfolio periods ended 12/31/2005	1 year (percent)	5 years (percent)	10 years or since inception* (percent)
Replacement Portfolio	3.26	6.32	5.17
Merrill Lynch High Yield Master Cash Pay Only Index	2.83	8.76	6.80
Credit Suisse First Boston Global High Yield Index[26]	2.25	9.82	7.13
Removed Portfolio	1.31	N/A	8.53
Lehman Brothers Aggregate Bond Index	2.43	N/A	4.97
CSFB High Yield Bond Index	2.26	N/A	10.64

* The predecessor of the Replacement Portfolio, the EQ/High Yield Portfolio, merged with the AXA Premier VIP High Yield Portfolio on August 15, 2003. The assets of the HRT Alliance High Yield Portfolio were transferred to the EQ/High Yield Portfolio on October 19, 1999. The HRT Alliance High Yield Portfolio commenced operations on January 2, 1987. The Removed Portfolio commenced operations on December 3, 2001.

[FR Doc. E6–17236 Filed 10–16–06; 8:45 am]
BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54584; File No. SR–Amex–2006–57]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change Relating to Stop Orders for Exchange Traded Funds and Trust Issued Receipts

October 6, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2006, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the rules applicable to stop orders for exchange traded funds and trust issued receipts. The text of the proposed rule change is available on the Amex's Web site at (*http://www.amex.com*), the Amex Office of the Secretary, and at the Commission's Public Reference Room. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletionsare in [brackets].

General and Floor Rules

Rule 154. Orders Left with Specialist

No member or member organization shall place with a specialist, acting as broker, any order to effect on the Exchange any transaction except at the market or at a limited price.

* * * Commentary

.01 No Change.

.02 No Change.

.03 No Change.

.04 (a) A specialist shall accept both stop orders and stop limit orders in securities in which he is so registered.

(b) When a specialist elects a stop order on his book by selling stock to the existing bid or buying stock at the existing offer for his own account, he must first obtain a Floor Official's approval *(except in the case of Exchange-Traded Fund Shares and Trust Issued Receipts if the transaction is 0.10 point or less away from the prior transaction).*[, and] *A*[a]ll stop orders so elected must be executed at the same price as his electing transaction.

(c) No Change.

.05—.15 No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .04(b) to Amex Rule 154 to provide that a specialist who elects a stop order on his book by selling stock to the existing bid or buying stock at the existing offer for his own account is not required to obtain floor official approval if the transaction is 0.10 point or less away from the prior transaction. This exception would only apply to transactions in Exchange-Traded Fund Shares and Trust Issued Receipts (collectively, ''ETFs'').

Currently, Exchange rules provide that when a specialist elects a stop order on the specialist's book by selling to the existing bid or buying from the existing offer, floor official approval must first be obtained. This current rule causes time delays and other impediments to an efficient and orderly marketplace and overly burdens floor officials when their time could be used more efficiently and effectively elsewhere. With the increasing use of technology and the increased competition in the marketplace, specifically auto-quoting and multiple market centers, timing in the market has become much faster and the ability to be fast has become much more important. The current Rule does not adequately account for these market structure changes thereby placing the specialist at a competitive disadvantage because of the requirement to first obtain floor official approval. Floor officials are also over burdened and this proposal could help to alleviate some of their administrative burdens and permit the reallocation of their time to the oversight and administration of other rules.

In addition, the requirement to obtain floor official approval is absolute without taking into account how large or small the price variation of the stop order is from the last trading price. The New York Stock Exchange LLC (the ''NYSE'') has adopted a threshold so that a minimum price variation of 0.10 point or less from the last trading price does not require floor official approval; [3] therefore, in order to remain competitive, the Exchange proposes to match the NYSE threshold whereby floor official approval would not be required if the price variation from the last trading price is 0.10 point or less. Similar to the NYSE's rules, the proposed rule change retains the requirement that the specialist guarantees that stop orders be executed at the same price as the electing sale.

The Exchange believes that eliminating the requirement for such transactions could help foster a more efficient and orderly marketplace, alleviate the administrative burden for floor officials and enable the Exchange to more effectively compete, while maintaining the requirement of floor official approval for the specialist stop order elections that are most likely to warrant floor official scrutiny (*i.e.*, where the electing transaction is more than 0.10 point away from the previous sale). The Exchange acknowledges that the elimination of the floor official approval pursuant to this proposal may increase the frequency of specialists electing stop orders by selling to the existing bid or buying from the existing offer. Accordingly, the Exchange will continue to conduct its existing surveillances to monitor specialists' compliance with the specific requirements of Commentary .04 to Amex Rule 154 (*i.e.*, obtaining floor official approval when required and executing the stop order at the same price as the electing trade) as well as their agency obligations to the impacted stop orders. The Exchange seeks approval of this proposal to amend Commentary .04(b) to Amex Rule 154 to provide that floor official approval is not required for a stop order in ETFs if the transaction is 0.10 point or less from the last trading price.

[26] Replaced December 31, 2005.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NYSE Rule 123A.40.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[4] in general, and furthers the objectives of Sections 6(b)(1) and 6(b)(5) of the Act,[5] in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–Amex–2006–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2006–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2006–57 and should be submitted on or before November 7, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17169 Filed 10–16–06; 8:45 am]

BILLING CODE 8011–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(1) and (b)(5).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54585; File No. SR–NASD–2005–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 Thereto Relating to Expansion of OATS Reporting Requirements to OTC Equity Securities

October 10, 2006.

I. Introduction

On August 25, 2005, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] the proposed rule change relating to expansion of the Order Audit Trail System (''OATS'') reporting requirements to OTC equity securities. The proposed rule change was published for comment in the **Federal Register** on October 18, 2005.[3] The Commission received three comment letters on the proposal.[4] NASD filed Partial Amendment No. 1 to the proposed rule change on September 21, 2006 (''Amendment No. 1'').[5] This order approves the proposed rule change, grants accelerated approval to Amendment No. 1, and solicits

[1] 15 U.S.C. 78s(b)(l).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52581 (October 11, 2006), 70 FR 60592 (the ''Notice'').

[4] Two comment letters were specific to this proposal. *See* letters to Jonathan G. Katz, Secretary, Commission, from John Polanin Jr., Chair, SIA Self-Regulation and Supervisory Practices Committee, dated December 2, 2005 (''SIA Letter'') and from Phylis M. Esposito, Executive Vice President, Chief Strategy Officer, Ameritrade, Inc., dated November 8, 2005 (''Ameritrade Letter''). One comment letter expressed general opposition to OATS. *See* letter filed via the Commission's Web Comment Form, from Rich Bertematti, dated September 7, 2006 (''Bertematti Letter''). In addition, NASD received comment letters about the proposed rule change following publication in NASD's Notice to Members 04–80 (November 2004). NASD addressed those comment letters in the Notice.

[5] In Amendment No. 1, NASD proposes to (1) amend NASD Rule 6955(b)(2) to clarify that members will not be required to comply with OATS reporting obligations with respect to an OTC equity security until a symbol has been assigned to the security; (2) exclude direct participation programs (''DPPs'') from the proposed definition of ''OTC equity security;'' (3) extend the implementation period; and (4) make technical changes necessary in light of the commencement of The NASDAQ Stock Market LLC (''Nasdaq'') as a national securities exchange. NASD also responded to comment letters received.

comments from interested persons on Amendment No. 1.

II. Description of the Proposed Rule Change

NASD Rules 6950 through 6957 impose obligations on member firms to record in electronic form and report to NASD on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled or executed by NASD members relating to equity securities listed and traded on Nasdaq. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes and transactions. NASD believes this information is critical to its conducting surveillance and investigations of member firms for violations of NASD rules and Federal securities laws.

To enhance the effectiveness of OATS as a regulatory tool, NASD proposes to amend NASD Rules 6951, 6952, and 6955 to require members to record and report to OATS order information relating to OTC equity securities.[6] Currently, the OATS requirements do not apply to OTC equity securities and as a result, NASD is unable to recreate, on an automated basis, an order and transaction audit trail for these securities. NASD believes that expanding OATS requirements to these securities would enhance its ability to review and examine for member compliance with certain trading rules, including, but not limited to, NASD's rules governing best execution and interpositioning,[7] limit order protection,[8] and offers at stated prices.[9]

In addition, NASD proposes two technical changes that are necessary given the commencement of Nasdaq as a national securities exchange.

III. Summary of Comments

The Commission received comment letters in response to the publication of the notice in the **Federal Register**.[10] The primary issues two of the commenters raised concern the scope of a member's obligations to record and report OATS information relating to OTC equity securities and the timing of the proposed rule change.

A. Scope of a Member's OATS Obligations Relating to OTC Equity Securities

1. Comments Relating to the Issuance of a Security Symbol

One of the commenters requested clarification of the definition and scope of ''OTC equity security'' and suggested that the appropriate scope of OATS reporting should include only those securities currently subject to Automated Confirmation Transaction (''ACT'') Service reporting requirements.[11] NASD responded that it does not believe that the scope of the proposed definition of ''OTC equity security'' should be limited as suggested by this commenter and stated that, as originally proposed, members should be required to record and report OATS information for all OTC equity securities. However, to address the situation where an OTC equity security does not have a symbol assigned to it at the time an OATS order event occurs, NASD proposed a clarifying change in Amendment No. 1 whereby, pursuant to NASD Rule 6955(b)(2), members would not be required to comply with their OATS reporting obligations with respect to an OTC equity security until a symbol has been assigned to that security.[12] NASD explained that members would still have an obligation to immediately record all other applicable OATS information in accordance with the provisions of NASD Rule 6954, irrespective of whether the security has a symbol assigned to it at the time the order is originated or received.[13] NASD represented to the Commission that it would detail these obligations under NASD Rules 6954 and 6955 in a Notice to Members and the revised OATS Technical Specifications,[14] both of which NASD will publish following this approval of the proposed rule change.

2. Comments Relating to DPPs

One commenter stated that DPPs should not be OATS reportable because they are ''effectively subscriptions, not trades'' and sold through a process that is not captured in automated systems within the firm.[15] Additionally, this commenter stated that the volume for these securities is low, and OATS reporting may discourage the sale of such products.[16] In response to the concerns raised by this commenter, NASD proposed in Amendment No. 1 to exclude DPPs from the definition of ''OTC equity security.'' NASD stated, however, that it would continue to monitor member activities relating to DPPs and may determine, at a later date, that applying OATS requirements to DPPs is appropriate. If that situation arises, NASD represented that it would submit a proposed rule change.

3. Additional Comments

One commenter stated that members should not be required to identify the type of security (*e.g.*, Nasdaq, OTCBB, Pink Sheets) in OATS reports and suggested that NASD provide a list of all OATS reportable securities, so that members do not have to rely on third party vendors for this information.[17] NASD responded that it will not require at this time that members identify the type of security as part of their OATS obligations. In addition, NASD stated it would provide a list of OTC equity securities that are subject to the OATS requirements on the OATS Web site.[18]

This same commenter also suggested that OATS should be capable of recognizing stocks that have had symbol changes and suggested that using the CUSIP number instead of the security symbol may be appropriate.[19] NASD responded by stating that a change to CUSIP number rather than security symbol would be costly and burdensome and is unnecessary because NASD's OATS system is able to track symbol changes (*e.g.*, where an ''E'' is appended to the symbol of an OTCBB issuer that is delinquent in its SEC filings).

One commenter stated that it understands OATS reporting is not required for OTC options, derivatives or

[6] NASD proposes to define ''OTC equity security'' as any equity security that: (1) Is not listed on a national securities exchange; or (2) is listed on one or more regional stock exchanges and does not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape.

[7] NASD Rule 2320.

[8] NASD Rule 6541.

[9] NASD Rule 3320.

[10] *See supra,* note 4.

[11] *See* SIA Letter, *supra* note 4, at 4.

[12] In proposing this exception from the reporting obligations, NASD emphasized that members should be diligent in their efforts to obtain a symbol, as necessary, for securities they wish to trade so that they can comply with their trade reporting obligations under NASD Rule 6620. NASD Rule 6620(c)(1) requires that each trade report include the symbol of the OTC equity security; trade reports that do not contain this information are rejected by the system. In addition, NASD noted that members have an obligation to report trades within ninety seconds of execution or on a next-day basis, as applicable under Rule 6620(a).

[13] NASD stated that it does not believe that members should face any technological difficulties in recording OATS information for an OTC equity security that does not have a symbol assigned to it, but the extended implementation period should allow sufficient time to address any such problems.

[14] NASD states that since OATS Phase III has been implemented, it does not expect any significant changes to the OATS Technical Specifications as a result of this proposed rule change. NASD anticipates that the only such change would be expansion of the list of securities that are OATS reportable.

[15] *See* SIA Letter, *supra* note 4, at 4–5.

[16] *Id.*

[17] *See* Ameritrade Letter, *supra* note 4, at 2.

[18] This list can currently be found under the Symbol Directory at *http://www.nasdaqtrader.com/trader/symboldirectory/symbol.stm.*

[19] *See* Ameritrade Letter, *supra* note 4, at 2.

swaps, and with respect to foreign securities, trades effected by NASD members in the U.S. would be reportable, while trades effected by a foreign affiliate of a member would not be reportable.[20] NASD confirmed that the commenter's understanding relating to the proposed OATS reporting requirements on this point is correct. NASD stated that, in addition, with respect to non-member foreign affiliates of members, OATS obligations do not apply, provided that the order is never received or held by the member, for example, where the order originates with a foreign affiliate and is not routed to the member. NASD clarified that, with respect to orders received by members for foreign securities that otherwise meet the definition of an OTC equity security, members would have an OATS obligation, irrespective of whether the order is ultimately effected inside or outside the United States. If, for example, a member receives an order in a foreign security and routes that order to a foreign exchange for handling and execution, the member would need to record and report to OATS the receipt of that order and the route to the foreign exchange.

Finally, this commenter also stated that an audit trail is not necessary for all markets and that NASD should be required to make the case that the accretive value of an order audit trail to the surveillance of the OTC market outweighs the imposition of additional costs and burdens on member firms.[21] NASD responded that it does not agree that it has to meet that standard and, rather, that the standards it must satisfy in any proposed rule change are set forth in Sections 15A [22] and 19(b) of the Act.[23] NASD believes it has made the requisite showing. NASD also responded that while it recognizes that the proposed rule change may impose additional costs and burdens on member firms, OATS reporting of OTC equity securities is important to NASD's surveillance systems and regulatory program. In recognition of the potential additional burden on members, however, as discussed in greater detail below, NASD proposed to extend the implementation period of the proposed rule change.

B. Timing of Proposed Rule Change

One commenter stated that NASD should allow a minimum of six months for implementation of the changes necessary for OATS reporting of OTC equity securities.[24] Another commenter stated that OATS for OTC equity securities should not be implemented until the industry can properly devote the personnel and technical resources necessary to achieve compliance.[25] This commenter also stated that OTC markets are manual by nature, and expanding OATS reporting to OTC equity securities at this time could render obsolete all of the work that has been put into production for OATS Phase III compliance.[26]

NASD responded that while it does not agree that the proposed expansion of OATS reporting to OTC equity securities would have a negative impact on the work done relating to OATS Phase III, it does acknowledge the technological burdens that may be imposed on members as a result of this proposal, as well as the fact that members have a number of regulatory initiatives requiring technological and system changes. Accordingly, in Amendment No. 1, NASD proposed an implementation date of six months following publication of revised OATS Technical Specifications incorporating the proposed rule change, which will be published no later than sixty days following Commission approval of the proposed rule change.[27] NASD believes that the extended implementation period will provide members sufficient time to make any adjustments necessary to implement OATS reporting for OTC equity securities, especially since, according to NASD, the technical specifications for OATS reporting of OTC equity securities would be substantially similar to the technical specifications that have been in place since July of 2006 for OATS Phase III.

In addition, one commenter suggested that NASD implement certain operational and/or procedural regulations relating to the OTC marketplace, such as expansion of the trade-through protections and limit order display requirements, prior to implementation of OATS reporting requirements and that until such time, best execution standards for NMS stocks and OTC stocks will remain unequal.[28] In response to this comment, NASD noted that it already has order handling and trading rules in effect that apply to the OTC marketplace, including, but not limited to, Rule 2320 (Best Execution and Interpositioning) and Rule 6541 (Limit Order Protection). NASD further stated that OATS reporting is necessary to enhance NASD's ability to review and examine for member compliance with these and other rules.

Finally, NASD responded to a commenter that expressed general opposition to OATS and asserted that OATS is a mechanism for NASD to generate income through fines.[29] The commenter further claimed that there has been no evidence that OATS has helped the investing public or assisted in any way in improving the capital markets.[30] In addition, the commenter noted the burdens that OATS imposes on members, and in particular, small firms.[31] NASD responded that it is aware of the costs and technological burdens associated with the proposed rule change, and in recognition proposed an extended implementation period in Amendment No. 1.

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and NASD's response to the comments. The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[32] particularly Section 15A(b)(6) of the Act,[33] which, among other things, requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

As discussed above, NASD currently requires member firms to record and report order information for transactions in Nasdaq Stock Market equity securities. NASD's OATS uses this

[20] *See* SIA Letter, *supra* note 4, at 4. This commenter also suggested that NASD exclude from the requirements of Rule 6620 transactions executed on a foreign exchange that is an ''affiliate member'' of the Intermarket Surveillance Group. *Id.* NASD has stated that Rule 6620 is not at issue in this rule filing.

[21] *See* SIA Letter, *supra* note 4, at 4.

[22] 15 U.S.C. 78*o*–3.

[23] 15 U.S.C. 78s(b).

[24] *See* Ameritrade Letter, *supra* note 4, at 2.

[25] *See* SIA Letter, *supra* note 4, at 2.

[26] *See* SIA Letter, *supra* note 4, at 3.

[27] The initial rule text as published in the notice proposed an implementation date of 120 days from publication of the OATS Reporting Technical Specifications.

[28] *See* Ameritrade Letter, *supra* note 4, at 3.

[29] *See* Bertematti Letter, *supra* note 4, at 1.

[30] *Id.*

[31] *Id.*

[32] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78*o*–3(b)(6).

information for integration with trade and quotation information to provide NASD with an accurate time-sequenced record of orders and transactions to detect for possible violations of NASD rules and other securities laws and regulations. NASD recognizes that the trading in OTC equity securities is often more manual than Nasdaq Stock Market equity securities, and while this may result in additional burdens on member firms to capture this data electronically, NASD believes that reporting information related to OTC equity securities is critical to its surveillance program. The Commission believes that it is consistent with the Act for NASD to expand the OATS reporting requirements to include OTC equity securities to assist it in detecting possible fraud or manipulation in the trading of such securities in order to help protect investors.

In addition, the Commission believes that the technical changes proposed by NASD, which NASD has noted are needed in light of Nasdaq's operation as a national securities exchange, are not only consistent with the Act, but also necessary to clarify NASD's rules.

V. Solicitation of Comments Concerning Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 to the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NASD–2005–101 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2005–101. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2005–101 and should be submitted on or before November 7, 2006.

VI. Accelerated Approval of Amendment No. 1

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after publication for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[34] As discussed in greater detail above, in Amendment No. 1, NASD proposed revisions to clarify that member firms do not need to comply with the OATS reporting obligations with respect to an OTC equity security until a symbol has been assigned to that security. In addition, in response to a comment letter, it proposed to exclude DPPs from the definition of OTC equity security. Because two commenters raised issues specific to the timing of the proposed rule change, NASD also proposed an extended implementation period in Amendment No. 1. Finally, NASD proposed two technical changes in Amendment No. 1 that are necessary to reflect the commencement of Nasdaq as a national securities exchange.

Since the changes proposed in Amendment No. 1 address commenter concerns and make changes that the Commission believes will help clarify the proposed rule change and should assist firms by providing greater guidance, as well as time for testing systems to help ensure compliance with the rule, and it does not raise any new issues of regulatory concern, the Commission finds good cause to accelerate approval of Amendment No. 1, consistent with Section 15A(b)(6) of the Act[35] and Section 19(b) of the Act.[36]

VII. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (File No. SR–NASD–2005–101), as amended, be and hereby is, approved, and that Amendment No. 1 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[38]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17167 Filed 10–16–06; 8:45 am]

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[34] 15 U.S.C. 78s(b)(2).

[35] 15 U.S.C. 78*o*–3(b)(6).

[36] 15 U.S.C. 78s(b).

[37] 15 U.S.C. 78s(b)(2).

[38] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54411A; File No. SR–NASD–2004–171]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Rule 2340 Concerning Customer Account Statements

October 6, 2006.

Correction

FR Doc. E6–15186, beginning on page 54105 in the issue of September 13, 2006,[1] contained an incorrect footnote. On page 54107, in the 1st column, footnote 24 provided an incomplete description of an explanation of an interpretive position in Securities Exchange Act Release No. 31511.

The corrected citation to Release No. 31511 in footnote 24 reads as follows:

''*See* Securities Exchange Act Release No. 31511 (Nov. 24, 1992), 57 FR 56973 (Dec. 2, 1992) (amending the SEC's net capital rule and explaining the staff's interpretation that to avoid more stringent capital requirements under the rule, an introducing firm must ''have in place a clearing agreement with a registered broker-dealer that states, for the purposes of SIPA and the Commission's financial responsibility rules, customers are customers of the clearing, and not the introducing, firm. Furthermore, the clearing firm must issue account statements directly to customers. Each statement must contain the name and telephone number of a

[1] *See* Securities Exchange Act Release No. 54411 (Sept. 7, 2006), 71 FR 54105 (Sept. 13, 2006).

responsible individual at the clearing firm whom a customer can contact with inquiries regarding the customer's account.'').''

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17180 Filed 10–16–06; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54576; File No. SR–Phlx–2006–57]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Appeals From a Hearing Officer or Hearing Panel Decision

October 5, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2006, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Phlx filed the proposed rule change as a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange By-Law Article XI, Section 11–3 to update the By-laws to make a minor clarifying change to reflect the fact that appeals can now be heard from a Hearing Officer or Hearing Panel decision. The proposed amendment to By-Law Article XI, Section 11–3 is set forth below. *Italics* indicate new text.

ARTICLE XI Appeals

* * * * *

Sec. 11–3. Appeal from Decisions of *Hearing Officer, Hearing Panel or* Business Conduct Committee

(a) No change.

(b) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange recently created the new staff position of a ''Hearing Officer,'' who, along with two other Hearing Panelists, will hear contested disciplinary matters that were previously heard by a panel appointed by the Chair of the Business Conduct Committee (''BCC'').[5] In connection with creating the Hearing Officer position, the Exchange amended By-Law Article X, Section 10–11, which governs the BCC, and Exchange Rules 960 and 970, the disciplinary rules. The purpose of this proposal is to update Exchange By-Law Article XI to reflect, based on the recent changes described above, that a decision from the Hearing Officer or Hearing Panel can now be appealed to the Exchange's Board of Governors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that this proposal should help to protect investors and the public interest by clarifying that appeals can now be heard from a Hearing Officer or Hearing Panel decision.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[10] However, Rule 19b–4(f)(6)(iii)[11] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the Phlx has requested that the Commission waive the 30-day operative delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change makes Phlx By-Law Article XI, Section 11–3 consistent with changes previously approved by the Commission.[12] For this reason, the Commission designates the

[2] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release No. 54011 (June 16, 2006), 71 FR 36157 (June 23, 2006) (SR–Phlx–2005–65).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *Id.*

[12] *See supra* note 5.

proposal to be effective and operative upon filing with the Commission.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2006–57 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2006–57. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2006–57 and should be submitted on or before November 7, 2006.[14]

[13] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. E6–17168 Filed 10–16–06; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10614]

Arizona Disaster Number AZ–00005

AGENCY: Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arizona (FEMA–1660–DR), dated 09/07/2006.

Incident: Severe Storms and Flooding.

Incident Period: 07/25/2006 through 08/04/2006.

Effective Date: 09/29/2006.

Physical Loan Application Deadline Date: 11/06/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Arizona, dated 09/07/2006, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Gila, Graham, Greenlee, Navajo, The Tribal Areas of The Hopi Tribe Within Navajo County, The Navajo Nation Within Navajo County, and The San Carlos Apache Tribe Within Gila, Graham, and Pinal Counties.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E6–17155 Filed 10–16–06; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2006–0077]

Program: Cooperative Agreements for Work Incentives Planning and Assistance Projects; Program Announcement No. SSA–OESP–07–1

AGENCY: Social Security Administration.

ACTION: Announcement of the availability of fiscal year 2006 cooperative agreement funds and request for applications.

Catalog of Federal Domestic Assistance (CFDA): This program is listed in the Catalog of federal Domestic Assistance under Program number 96.008, Social Security Administration—Work Incentives Planning and Assistance Program.

SUMMARY: The Social Security Administration (SSA) announces its intention to competitively award cooperative agreements to establish community-based work incentives planning and assistance projects in the following locations:

State of Alabama, the counties of Autauga, Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lee, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox;

State of Indiana, the counties of Clark, Crawford, Daviess, Dearborn, Dubois, Floyd, Gibson, Greene, Harrison, Hendricks, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Monroe, Ohio, Orange, Parke, Perry, Pike, Posey, Ripley, Scott, Spencer, Sullivan, Switzerland, Vanderburgh, Vermillion, Vigo, Warrick, Washington;

State of Kentucky, the counties of Bath, Bell, Bourbon, Boyd, Bracken, Breathitt, Carter, Clark, Clay, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Madison, Magoffin, Martin, Mason, McCreary, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rockcastle, Rowan, Whitley, and Wolfe;

State of Nevada, all counties;

State of New York, the counties of Albany, Columbia, Dutchess, Greene, Orange, Putnam, Rockland, Ulster, and Westchester;

State of Ohio, the counties of Ashtabula, Mahoning, Portage, Stark, Summit, and Trumbull; and

Pacific territories of Guam, the Northern Mariana Islands, and American Samoa.

The purpose of these projects is to disseminate accurate information about work incentives programs and issues related to such programs to beneficiaries with disabilities (including transition-to-work aged youth). This will help enable them to make informed choices about working, how available work incentives can facilitate their transition into the workforce, and whether and when to assign their Ticket to Work. The ultimate goal of the work incentives planning and assistance projects is to assist SSA beneficiaries with disabilities succeed in their return to work efforts.

DATES: The closing date for receipt of cooperative agreement applications under this announcement is December 15, 2006. Prospective applicants are also asked to submit, preferably by November 1, 2006, an e-mail, a fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–07–1) and title (Work Incentives Planning and Assistance Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. This notice of intent is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Office of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235 or e-mailed to *Jenny.Deboy@ssa.gov*.

FOR FURTHER INFORMATION CONTACT: The Internet is the primary means recommended for obtaining information on the program content of this announcement. If an applicant has a question about this announcement, that question should be referred to the following Internet e-mail address: *Jenny.Deboy@ssa.gov*. When sending in a question, applicants should include the program announcement number SSA–OESP–07–1 and the date of this announcement. In the rare instances when an organization may not have access to the Internet, an applicant with a question about the program content may contact: Jenny Deboy, Project Officer, or Barbara Jones, Team Leader, Social Security Administration, Office of Employment Support Programs, Office of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. The telephone numbers are: Jenny Deboy, (410) 965–8658, or Barbara Jones, (410) 965–7764. The fax number is (410) 966–1278.

To obtain an application kit, see the instructions under Part IV, Section A. For information regarding the application package where Internet access is not available, contact: Phyllis Y. Smith, Team Leader, or Gary Stammer, Grants Management Officer, Social Security Administration, Office of Acquisition and Grants, Grants Management Team, 7111 Security Boulevard, 1st Floor-Rear Entrance, Baltimore, Maryland 21244. The telephone numbers are Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

SUPPLEMENTARY INFORMATION: The Social Security Protection Act of 2004 (Pub. L. 108–203) reauthorized funding through FY 2009 for the WIPA program, which was initially authorized as the Benefits Planning, Assistance and Outreach (BPAO) program by the Ticket to Work and Work Incentives Improvement Act of 1999 (Pub. L. 106–170), enacted on December 17, 1999. The WIPA Program is designed to provide work incentives planning, assistance, and outreach services to SSA's beneficiaries with disabilities nationwide, in all geographic areas and U.S. territories.

SSA initially made announcements of BPAO cooperative agreement funds and requested applications for a 5-year period in FY 2000 and FY 2001. All previously funded BPAO cooperative agreement awards expired on September 29, 2006. In May 2006, SSA made an announcement of cooperative agreement funds for the WIPA program, nationwide, for the period September 30, 2006 through September 29, 2009. Awards under that announcement have been made. This supplementary announcement is for areas of the nation that remain uncovered subsequent to those awards.

This announcement is to request applications for awards, which will begin in calendar year 2007, to provide work incentives planning, assistance and outreach services to all SSA beneficiaries with disabilities seeking employment in the geographic areas listed in ''**SUMMARY**'' above. Subject to the availability of funds, SSA anticipates minimum awards of $100,000 per entity (Minimum awards for territories remain at $50,000) and a maximum of $300,000 per entity will be available to fund specific WIPA projects annually. Awardees are required to contribute a non-Federal match of project costs of at least 5% of the total project cost. The non-Federal share may be cash or in-kind (property or services). Awards made under this announcement may be renewed annually through FY 2009. Future funding will be contingent upon satisfactory progress in achieving the objectives of the project, the availability of fiscal year funds and the continued relevance of the project activity to the Social Security Administration. The total period of performance, if renewed annually, will be until September 29, 2009.

SSA will conduct pre-application teleconference seminars to provide interested WIPA applicants with guidance and technical assistance in preparing their applications. Information about when the seminars will be held will be on SSA's Web site at: *http://www.socialsecurity.gov/work/WIPARFA.html*

Table of Contents

I. Funding Opportunity Description
A. Background
B. Work Incentives Planning and Assistance Service Plan (WIPA)
C. Community Work Incentives Coordinator Responsibilities and Competencies
D. Work Incentives Planning and Assistance Services Defined
E. Additional Conditions for Award of a Cooperative Agreement
II. Award Information
III. Eligibility Information
A. Eligible Applicants
B. Policies Regarding Potential Conflict of Interest in WIPA Service Delivery
C. Cost Sharing or Matching
IV. Application and Submission Information
A. Address to Request Application
B. Content and Form of Application Submission
C. Electronic Applications
D. Mailed Applications
E. Checklist for a Complete Application
F. Guidelines for Application Submission
G. Submission Dates and Times
H. Intergovernmental Review
I. Funding Restrictions
J. Other Submission Requirements
V. Application Review Information
A. Criteria
B. Review and Selection Process
VI. Award Administration Information
A. Award Notices
B. Administrative and National Policy Requirements
C. Reporting
D. MI Program Data to be Collected and Reported
VII. Agency Contacts
VIII. Other Information

I. Funding Opportunity Description

A. Background

Section 1149 of the Social Security Act, as added by section 121 of the Ticket to Work and Work Incentives Improvement Act of 1999, requires the Commissioner of Social Security (the

Commissioner) to establish a community-based work incentives planning and assistance program for the purpose of disseminating accurate information to beneficiaries with disabilities on work incentives programs and issues related to such programs to assist them in their employment efforts. The Commissioner has established a competitive program of cooperative agreements to provide work incentives planning, assistance and outreach. This SSA program is called the Work Incentives Planning and Assistance (WIPA) Program, formerly referred to as the Benefits Planning, Assistance and Outreach (BPAO) Program. The WIPA program also provides information on the availability of protection and advocacy services to beneficiaries with disabilities, including beneficiaries participating in the Ticket to Work and Self-Sufficiency Program established under section 1148, the Supplemental Security Income (SSI) program established under section 1619, and other programs that are designed to encourage beneficiaries with disabilities to seek, maintain and regain employment.

The WIPA Program is an important part of SSA's employment strategy for beneficiaries with disabilities. One of SSA's goals in implementing the Ticket Program is to help achieve a substantial increase in the number of beneficiaries with disabilities who return to work and achieve greater self-sufficiency.

In support of this goal, SSA is seeking applications from any State or local government (excluding any State agency administering the State Medicaid program), public or private organization, or nonprofit or for-profit organization (for-profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any cooperative agreement awardee), as well as Native American tribal organizations that the Commissioner determines is qualified to provide work incentives planning services. Applicants will emphasize the WIPA Program's efforts to provide Social Security beneficiaries receiving Social Security Disability Insurance (SSDI) and/or Supplemental Security Income (SSI) based on disability and/or blindness with work incentives planning, assistance and outreach services to assist them in their return to work efforts. Applicants are also strongly encouraged to partner with their local Department of Labor (DOL) One-Stop Career Center which serves as a ''port of entry'' for jobs for beneficiaries, as well as with other local partners that provide employment-related services to SSA beneficiaries with disabilities. Currently, DOL One-Stop Career Centers have many invaluable employment-related resources and supports that can help ensure a disabled beneficiary's success in seeking and maintaining employment.

While SSA recognizes that not every SSDI or SSI beneficiary with a disability will use work incentives planning and assistance services, awardees must make these services available to all eligible beneficiaries within a WIPA awardee's assigned geographic area.

Note: All applications will be reviewed to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be forwarded to an independent panel of reviewers for evaluation. The results of this review and evaluation will assist the Commissioner in making award decisions. Although the results of this review and evaluation are a primary factor considered in making award decisions, the evaluated score is not the only factor used. In selecting eligible applicants to be funded, consideration may be given to issues such as experience, past performance, proposed costs, the need to achieve an equitable distribution of WIPA projects among geographic regions of the country, as well as, the need to achieve an equitable distribution of WIPA projects among disability and minority populations.

B. Work Incentives Planning and Assistance (WIPA) Service Plan

In order to be considered for an award, WIPA applicants must provide a detailed written plan for how they will deliver the full range of work incentives planning and assistance services; have the resources, management, qualifications and experience necessary to successfully administer the project, as well as provide a written Quality Assurance (QA) plan that demonstrates the efficacy of the service delivery plan. Applicants should also provide supporting documentation regarding how they will work with the Department of Labor (DOL) One-Stop Career Centers; and a written assurance that they will work in collaboration with the Program Manager for Recruitment and Outreach (PMRO).

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *www.socialsecurity.gov/work/WIPARFA.html*

Applicants should address in their written plan:

- Their understanding of work incentives planning and assistance services as they relate to a beneficiary's return to work efforts, including other Federal, State, and local benefits programs (designed to assist beneficiaries with disabilities with employment) with which they have worked in the past;
- Their efforts to develop and maintain partnering and relationship with other employment-related local organizations, including DOL One-Stops, to maximize a beneficiary's return to work efforts;
- Their ability to participate with the PMRO in conducting and coordinating outreach activities.

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *www.socialsecurity.gov/work/WIPARFA.html*

In view of the fact that the PMRO has primary responsibility for outreach, WIPA projects should designate no more than 10% of their project resources to other outreach efforts;

- Provide a list of specific resources, services and supports that will be involved in the project and their roles as they relate to work incentives and a beneficiary's return to work efforts;
- A detailed plan for monitoring beneficiary progress, case management and follow-up;
- A standard process for collecting beneficiary-related Management Information (MI) and a Quality Assurance (QA) plan that will evaluate the work incentives planning and assistance services provided;

Note: Applicants should document that they agree to collect Social Security Numbers (SSNs) of beneficiaries and include them in the SSA approved data collection system so that SSA may further evaluate the work incentives services provided.

- Written procedures for addressing potential organizational conflict of interest in regards to the delivery of WIPA services and other programs or services offered by the organization; and,
- Written grievance procedures for beneficiaries and evidence of its compliance (which will be submitted to SSA quarterly.)

Each applicant should address the proposed number of beneficiaries with disabilities it expects to serve.

Awardees are encouraged to hire and staff their offices with individuals with disabilities who have used work incentives to successfully go to work. These individuals should conduct as many of the day-to-day operational functions as possible.

Awardees must state how they will ensure equitable access and services for all beneficiary disability groups. This requirement may be met by partnering with other community-based organizations.

In providing work incentives related education and planning, WIPA projects

must make concerted and aggressive efforts to address the needs of underserved individuals with disabilities from diverse ethnic and racial backgrounds (*e.g.*, African Americans, Native Americans, Native Hawaiians or Other Pacific Islanders, Alaskan Natives, Asian-Americans, and Hispanics). In particular, applicants should show how they will collaborate with PMRO to conduct outreach that will ensure interaction with diverse communities and be specific to their requested geographic area. Applicants who serve tribal lands and sovereign nations must also provide documentation of how they will ensure equitable access and services for Native-American and Alaskan-Native populations. Applicants must indicate if formal agreements with tribal governments or Section 121 VR Programs, etc., are in place.

The applicants must also describe how they will address any special cultural requirements of populations, *e.g.*, Native Americans, within the targeted geographic area, as well as non-English speaking populations and SSI beneficiaries as young as age 14.

Applicants must have established strong working relationships with other agencies that are already providing services designed to enhance the employability, employment and career advancement of beneficiaries with disabilities, particularly, DOL One-Stop Career Centers which provide employment support by assisting a beneficiary with interview techniques, resume writing, job coaching, and a variety of other support services that lead to employment. A full explanation of these collaborative efforts should be provided.

In addition to DOL One-Stop Career Centers, awardees are encouraged to collaborate with other public and/or private organizations (*e.g.*, SSA Field Offices, Centers for Medicare and Medicaid Services (CMS), Vocational Rehabilitation (VR) Agencies, Employment Networks (ENs), Minority Commission, Public Schools, Department of Education, and Mental Health organizations), through interagency agreements or other mechanisms, to integrate and strengthen work incentives planning and assistance services with employment services available to beneficiaries with disabilities.

Because of the life transitions that youth with disabilities experience, it is important to target specific services to this population. Each project must make WIPA services available to SSI beneficiaries as young as age 14 and state how they will target and serve transition-aged youth.

Applicants for counties in the State of New York must indicate the ability to work closely with the SSA Youth Transition Process Demonstration (YTD) projects. In October 2003 a grant was awarded to develop service delivery systems that demonstrate how communities can integrate services and resources to achieve positive transition results for youth from secondary education to either post-secondary education and/or employment. The YTD projects work with youth ages 14–25 who receive SSI or SSDI benefit payments based on their own disability and/or blindness, or youth at risk of receiving such benefits. Additional information regarding the YTD projects may be found at *http:\\www.socialsecurity.gov/disabilityresearch.*

Applicants must provide evidence of collaborative relationships with relevant agencies through references in regards to work incentives experience, letters of intent, memoranda of understanding, etc. Applicants should not request references, letters of intent or commitment from SSA field offices as SSA will assure field office cooperation.

The WIPA awardees will collect data pertaining to work incentives planning, assistance, and outreach activities as described in Part IV, Section C, Reporting; and cooperate with SSA in providing the information needed to evaluate the quality of the services being provided and for an assessment of the success of the WIPA Program.

Where applicable, applicants should indicate if they are participants of the Disability Program Navigator (DPN) initiative, a program established by the Social Security Administration (SSA) and the Employment and Training Administration (ETA) of the Department of Labor (DOL). Participants in the DPN initiative must fully explain how, with WIPA personnel and DPN personnel working collaboratively, they will provide seamless services to beneficiaries seeking employment.

C. Community Work Incentives Coordinator Responsibilities and Competencies

1. Responsibilities

The WIPA cooperative agreement awardees shall select individuals who will act as Community Work Incentives Coordinators (CWICs). The CWICs will provide work incentives planning and assistance directly to beneficiaries with disabilities to assist them in their employment efforts, and in collaboration with SSA's Program Manager for Recruitment and Outreach (PMRO) contractor, conduct outreach efforts to beneficiaries with disabilities (and their families) who are potentially eligible to participate in Federal or State work incentives programs. As part of work incentives planning and assistance, CWICs will also screen and refer beneficiaries with disabilities to the appropriate Employment Networks (ENs) based on the beneficiary's expressed needs and type of impairment. CWICs are also required to work in cooperation with SSA's Area Work Incentives Coordinators (AWICs), Federal, State, local and private agencies and other nonprofit organizations that serve beneficiaries with disabilities seeking employment. CWICs will also provide general information on the adequacy of health benefits coverage that may be offered by an employer of a beneficiary with a disability; the extent to which other health benefits coverage may be available to that beneficiary in coordination with Medicare and/or Medicaid; and the availability of protection and advocacy services for beneficiaries with disabilities and how to access such services.

2. Competencies and Credentialing

Applicants must ensure that CWICs have the skills required to competently provide work incentives planning and assistance services that will assist beneficiaries in their employment efforts. WIPA awardees will be required to provide documentation to SSA that CWIC personnel meet the requirements below. SSA will use this documentation to credential CWIC personnel before they may begin providing beneficiary services.

SSA prefers that CWICs have attained a bachelor's degree in a relevant field, or possess relevant experience. CWICs may possess a combination of education and experience if the experience provides the knowledge, skills and abilities required to successfully perform the duties of the position as shown below. Former beneficiaries may substitute up to two years of full-time work for the education requirement if they can demonstrate that they used SSA work incentives to successfully gain employment. All CWICs must demonstrate successful completion of required SSA sponsored work incentives training or shall complete said training within 3 months of hire.

CWICs should bring the following knowledge, skills, and abilities to the position:

- Basic math skills, with an emphasis on problem solving;

• Deductive ability with analytical thinking and creative problem solving skills;
• Competent interviewing and partnering skills;
• Computer proficiency;
• An ability to link an individual with disabilities with employment opportunities;
• Ability to interpret Federal, State, and local laws, regulations, and administrative codes on public benefits;
• Communication skills (written and verbal);
• Knowledge of terminology used to describe certain disabilities and an awareness of cultural and political issues pertaining to diverse populations and disabilities; and
• Basic computer skills.

CWICs are required to be proficient in the following:

• Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability programs knowledge;
• Knowledge of SSA and other Federal, State and local work incentives programs;
• Knowledge of all public benefits programs, basic operations and inter-relationships among the programs, specifically in terms of their impact upon employment;
• Translating technical information for lay individuals;
• Accessing information in a variety of ways (including the ability to be able to recognize when additional information is needed);
• How to access specific Employment Network (EN) information;
• Interpersonal skills (*e.g.*, recognize and help people manage anger and conflict)
• Knowledge of SSA's field office structure and how to work with various SSA work incentives specialists *e.g.*, Area Work Incentives Coordinators (AWICs), Plan to Achieve Self Support (PASS) Specialists, Work Incentives Liaisons (WILs);
• Knowledge of ethical standards of conduct (*e.g.*, confidentiality, anger and conflict);
• Counseling and evaluation-related skills (ability to listen, evaluate alternatives, advise on potential course of action); conflict of interest); and
• Ability to manage beneficiary case files and information electronically.

The applicant must clearly explain how it will ensure all individuals hired as CWICs will possess or acquire the relevant knowledge, skills and abilities. SSA may contract with separate entities to provide technical assistance and training about SSA's programs and work incentives, Medicare and Medicaid, and other Federal work incentives programs to awardees on an ongoing basis.

Note: Due to the fact that CWICs will have access to confidential beneficiary information they are subject to SSA conducted background checks and fingerprinting in accordance with SSA personnel suitability requirements. SSA will distribute the necessary forms and consents for completion upon award.

D. Work Incentives Planning and Assistance Services Defined

1. Work Incentives Planning Services

Work incentives planning services requires an in-depth understanding of the beneficiary's current situation and how available work incentives can impact on a beneficiary's employment efforts. CWICs will establish written benefits analysis plans for beneficiaries with disabilities outlining their employment options and developing long-term supports that may be needed to ensure a beneficiary's success in regards to employment. CWICs will also, based upon a beneficiary's needs, make referrals to Employment Networks (ENs) or Vocational Rehabilitation (VR) when appropriate. CWICs will also provide periodic, follow-up planning services to ensure that the information, analysis, and guidance is updated as new conditions (with regard to the applicable programs or to the beneficiary's situation) arise.

To provide work incentives planning services, CWICs will:

• Obtain and evaluate comprehensive information about a beneficiary with a disability on the following:
—Beneficiary's background,
—Disabling Impairments/Conditions,
—Educational and vocational,
—Employment and earnings,
—Resources,
—Federal, State and local benefits availability,
—Health insurance availability,
—Work expenses,
—Work Incentives availability, and
—Service(s) and supports availability;
• Assess the potential impacts of employment and other changes on a beneficiary's Federal, State and local benefits eligibility and overall financial well-being;
• Provide detailed information and assist the beneficiary in understanding and assessing the potential impacts of employment and/or other actions or changes on his/her life situation, and provide specific guidance regarding the effects of various work incentives;
• Develop a comprehensive framework of options available to a beneficiary and project results for each as part of the career development and employment process; and
• Ensure confidentiality of all information provided.

2. Work Incentives Assistance Services

Work incentives assistance involves the delivery of accurate information and direct supports to assist a beneficiary in determining the most advantageous work incentives to use in starting or returning to work. Work incentives assistance also involves providing information and referral in terms of Ticket to Work assignment to Employment Networks (ENs) and Vocational Rehabilitation (VR). Work incentives assistance will generally build on previous planning services provided. Periodic updates of a beneficiary's specific needs and requirements, and reassessment for additional services for monitoring and managing work incentives to ensure a beneficiary's success in their employment efforts will also be required.

To provide work incentives assistance services, CWICs will:

• Emphasize the use of work incentives planning that will lead to greater self-sufficiency and employment for beneficiaries with disabilities;
• Refer beneficiaries to Vocational Rehabilitation (VR), Employment Networks (ENs), DOL One-Stop Career Centers, as well as other organizations that emphasize or provide seamless employment-related supports and ticket assignments.
• Help beneficiaries with disabilities resolve problems related to work and education efforts;
• Provide ongoing, comprehensive work incentives monitoring and management assistance to beneficiaries who are employed or seeking employment; and
• Provide long-term work incentives management on a scheduled, continuous basis, allowing for the planning and provision of supports at regular checkpoints, as well as critical transition points in a beneficiary's receipt of benefits, improvement of medical condition, work attempts, training and employment;
• Provide ongoing direct assistance to a beneficiary in the development of a comprehensive, long-term work plan for the effective use of Federal, State and local work incentives. Specific components of the plan must address:
—Desired return to work and self-sufficiency outcomes,
—Related steps or activities necessary to achieve outcomes,
—Associated dates or time frames,
—Building on initial work incentives planning efforts including

information gathering, analysis and advisement, and

—Benefits/financial analysis (pre and post-employment);

• Provide intensive assistance to beneficiaries, their key stakeholders, and their support teams in making informed choices and establishing employment-related goals. Needed assistance may include, but is not limited to, the following:

—Explanations, descriptions, and written plans on how SSDI and SSI work incentive programs may lead to self-supporting employment by developing a Plan for Achieving Self-Support (PASS); the use of Impairment Related Work Expenses (IRWEs); the use of a Subsidy; Ability to claim unincurred Business Expenses; Continued Payments Under a Vocational Rehabilitation Program (also known as Section 301); as well as the possibility of reinstatement of benefits when necessary without filing a new application;

—Explanations, descriptions, and written plans on how the SSI 1619(a) and 1619(b) provisions and requirements may lead to self-supporting employment by allowing for continued medical assistance coverage; earned income exclusion; student earned income exclusion; exclusion of property essential to self-support; as well as the possibility of reinstatement of benefits when necessary without filing a new application;

—Explanations, descriptions, and written plans on how the SSDI trial work period (TWP) and extended period of eligibility (EPE) provisions may lead to self-supporting employment by allowing payment of benefits for a specified period of time dependent upon the amount of earnings;

—Advocating for work supports on behalf of a beneficiary with other agencies and programs, which requires in-person, telephone and/or written communication with the beneficiaries, other individuals and other involved parties, generally, over a period of several weeks to several months.

• Provide ongoing follow-up assistance to beneficiaries who have previously received work incentives planning and/or other types of work incentives assistance services, and assist them and other involved to:

◦ Update their information,

◦ Contact an Employment Networks (ENs) or Vocational Rehabilitation, when necessary,

◦ Reassess the impact of employment and other changes on benefits and work incentives, and

◦ Provide additional guidance on work incentives options, issues and management strategies.

• Assist beneficiaries to update work incentives management plans throughout their employment efforts;

• Collaborate with SSA's Program Manager for Recruitment and Outreach (PMRO) to conduct outreach to beneficiaries with disabilities about the use of work incentives to work.

3. Support to PMRO Work Incentives Education/Ticket Marketing/Recruitment

The WIPA awardees will be required to provide local CWIC support to the PMRO in order to provide community-based Work Incentives Educational Seminars for beneficiaries with disabilities to learn about available work incentives. These local Work Incentives Education/Ticket Marketing/Recruitment meetings are intended to provide accessible, scenario based learning opportunities for beneficiaries with disabilities to understand the availability and use of work incentives to assist them in their return to work efforts. In addition, at the end of these meetings, Vocational Rehabilitation (VR), Employment Networks (ENs) and other employers will also be invited to participate to introduce their services so that beneficiaries who want to work will be informed about available employment support services and opportunities in the community.

The PMRO has primary responsibility for outreach. In support of PMRO activities, WIPA's should designate a maximum of 10% of their staff time to ticket marketing/recruiting efforts under the direction of the PMRO.

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html*

The WIPA should make staff resources available at least one day per week to assist the PMRO to:

• Identify accessible local venues for holding meetings (preference should be given to DOL One-Stop Career Centers);

• Conduct regular (at least weekly) work incentives education and Ticket to Work recruitment sessions in collaboration with the PMRO, SSA staff, the local Workforce Investment Board's Disability Program Navigators, local Employment Networks (ENs), Vocational Rehabilitation (VR), employers and other potential partners.

• At the weekly sessions present, with the assistance of local SSA staff (if available), a 60–90 minute scenario-based work incentives overview (to be provided in accessible formats) by the PMRO.

4. Additional Work Incentives Outreach Services

Work incentives outreach activities are educational efforts to inform beneficiaries of available work incentives, as well as the services and supports available to enable them to access and benefit from those work incentives in terms of working. In view of the fact that the PMRO has primary responsibility for outreach, WIPA's should designate no more than 10% of their project resources for other local outreach efforts; excluding those resources allocated to the PMRO Work Incentives Educational Seminars. WIPA's will be provided such things as marketing materials, developed by the PMRO. Each project will support the PMRO in doing outreach, participate with them, and coordinate any outreach activities through them. Outreach activities should be targeted directly to SSDI and SSI beneficiaries with disabilities, their families, advocacy groups, service provider agencies, and employers that have regular contact with them. Outreach activities should be directed toward and sensitive to the needs of individuals from diverse ethnic backgrounds, such as persons with English as their second language, non-English speaking persons, individuals residing in highly urban or rural areas, and other traditionally underserved groups.

To conduct ongoing local outreach, CWICs will:

• Prepare and disseminate information explaining the Ticket to Work Program and other Federal, State or local work incentives programs and their interrelationships; and

• Market the Ticket to Work Program by working in cooperation with the PMRO contractor as well as other Federal, State, and private agencies and nonprofit organizations that serve beneficiaries with disabilities, such as DOL One-Stop Career Centers and other agencies and organizations that focus on vocational rehabilitation and work-related training and counseling.

To assist SSA in assessing the scope and usefulness of outreach and information provided under this program, each project is required to demonstrate a collaborative effort with other community-based organizations experienced in providing services to people with disabilities, particularly DOL One-Stop Career Centers. Applicants should provide proof that the assigned Project Director possesses

work incentives management experience and has knowledge of all SSA's work incentives available to beneficiaries with disabilities.

In addition, projects will conduct regular work incentives education and Ticket to Work outreach sessions in collaboration with the PMRO, SSA staff, the local Workforce Investment Board's Disability Program Navigators, Vocational Rehabilitation (VR), local Employment Networks (ENs) and other potential partners. Projects will also need to coordinate joint outreach services with the SSA Area Work Incentives Coordinator (AWIC) to include attendance at quarterly Training and Technical Assistance meetings with the AWIC.

5. Costs

Federal cooperative agreement funds may be used for allowable costs incurred by WIPA awardees in conducting direct work incentives planning and assistance services to SSA's beneficiaries with disabilities. These costs could include administrative and overall project management costs, within the limitations discussed in Section II, Award Information.Federal cooperative agreement funds are not intended to cover costs that are reimbursable under an existing public or private program, such as social services, rehabilitation services, or education. No SSDI or SSI beneficiary can be charged for any service delivered under a WIPA project cooperative agreement, including the preparation of a PASS. Work incentives planning and assistance services are intended to be free and must be made accessible to all SSA beneficiaries with disabilities in the project's geographical area.

E. Additional Conditions for Award of a Cooperative Agreement

Upon award, the WIPA cooperative agreement awardees shall:

1. Employ CWICs and require them to complete an approved initial four day training session within 3 months of award. SSA, or its designated technical assistance and training contractor, will provide technical assistance and training about SSA's programs and work incentives (*e.g.*, TWP, EPE, IRWE, 1619(a) and (b), PASS) and Medicaid buy-in provisions/Balanced Budget Act, Medicare and Medicaid, and on other Federal work incentives programs to WIPA projects.

CWICs will be trained on how to screen and refer beneficiaries with disabilities to the appropriate ENs based on the beneficiary's expressed needs and types of impairments.

WIPA awardees must provide training and technical assistance to their CWICs about applicable State and local programs and the effects that these programs have on the eligibility and benefits of other programs.

2. Ensure that CWICs are provided periodic refresher, update and new hire training sessions, as needed, and that they take part in the evaluation of training activities and the evaluation of ongoing training needs evaluation by SSA or its designated contractor.

3. Ensure that CWICs have completed work incentives training within 3 months of award, develop a local outreach strategy and begin to implement outreach, in collaboration with PMRO, within 3 months of award.

4. Obtain approval from SSA of management information system data collection elements and procedures with SSA to assure compatibility with the national data base collection program (within 60 days after award);

Note: Applicants should document that they agree to collect Social Security Numbers (SSNs) of beneficiaries and include them in the SSA approved data collection system so that SSA may further evaluate the work incentives services provided.

5. Develop and submit quarterly program progress reports that contain management information to SSA's Office of Acquisition and Grants (OAG) and SSA's Office of Employment Support Programs;

6. Develop and submit bi-annual financial reports to SSA, OAG;

7. Provide to SSA for approval and prior to implementation a detailed description of any and all planned changes to the project design;

8. Cooperate with SSA in scheduling and conducting site visits, and allow SSA immediate access to WIPA facilities, personnel, and SSA beneficiaries upon request;

9. Develop and maintain a collaborative working relationship with the local servicing SSA field offices;

10. Implement an ongoing management and quality assurance process set by SSA.

II. Award Information

Legislative authority for this cooperative agreement program is in section 1149 of the Social Security Act (the Act), as established by section 121 of Public Law 106–170 and subsequent reauthorization in Section 407 of Public Law 108–203. The regulatory requirements that govern the administration of SSA awards are in the Code of Federal Regulations, Title 20, Parts 435 and 437 (as published in the May 27, 2003 **Federal Register** at 68 FR 28710 and 28727). Applicants are urged to review the requirements in the applicable regulations.

All awards made under this program are in the form of cooperative agreements. A cooperative agreement anticipates substantial involvement between SSA and the awardee during the performance of the project. Involvement shall include SSA collaboration or participation in the management of the activity as determined at the time of the award. For example, SSA will be involved in decisions involving project design and scope, hiring of personnel, service delivery priorities, deployment of resources, release of public information materials, quality assurance, and coordination of activities with other offices.

Actual funding availability during this period is subject to annual appropriation by Congress. SSA anticipates that the award under this announcement will be made in early calendar year 2007.

SSA will award cooperative agreements to qualified entities based on the number of beneficiaries with disabilities receiving SSDI and/or SSI benefits who reside in the geographic area to be served.

Subject to the availability of funds, SSA anticipates that a minimum of $100,000 per entity (Minimum awards for territories remains at $50,000) and a maximum of $300,000 per entity will be available to fund specific WIPA projects annually.

SSA may suspend or terminate any cooperative agreement in whole or in part at any time before the date of expiration, whenever it determines that the awardee has failed to comply with the terms and conditions of the cooperative agreement. SSA will promptly notify the awardee in writing of the determination and the reasons for suspension or termination, and the effective date of the suspension or termination.

III. Eligibility Information

A. Eligible Applicants

A cooperative agreement may be awarded to any State or local government (excluding any State administering the State Medicaid program), public or private organization, or nonprofit or for-profit organization (for-profit organizations may apply with the understanding that no cooperative agreement funds may be paid as profit to any awardee), as well as Native American tribal organizations that the Commissioner determines is qualified to provide work incentives planning,

assistance and outreach services to all SSDI and SSI beneficiaries with disabilities, within the targeted geographic area. Partners may include; but are not limited to, Centers for Independent Living established under title VII of the Rehabilitation Act of 1973, protection and advocacy organizations, Native American tribal entities, client assistance programs established in accordance with section 112 of the Rehabilitation Act of 1973, State Developmental Disabilities Councils established in accordance with section 124 of the Developmental Disabilities Assistance and Bill of Rights Act, and State agencies administering the State program funded under part A of title IV of the Act. The Commissioner may also award a cooperative agreement to a State or local Workforce Investment Board, a Department of Labor (DOL) One-Stop Career Center System established under the Workforce Improvement Act of 1998, or a State Vocational Rehabilitation (VR) agency.

Note: SSA will not further consider applications for independent panel review that do not meet the organizational eligibility criteria as noted above.

Note: For-profit organizations may apply with the understanding that no cooperative agreement funds may be profit to an awardee of a cooperative agreement. Profit is considered as any amount in excess of the allowable costs of the cooperative agreement awardee. A for-profit organization is a cooperation or other legal entity that is organized or operated for the profit or benefit of its shareholders or other owners and must be distinguishable or legally separable from that of an individual acting on his/her own behalf. Applications will not be further considered for independent panel review that do not meet all eligibility criteria at the time of submission of applications.

Cooperative agreements may not be awarded to:

- Any individual;
- Social Security Administration Field Offices;
- Any State agency administering the State Medicaid program under title XIX of the Act;
- Any organization described in section 501(c)(4) of the Internal Revenue Code of 1968 that engages in lobbying (in accordance with section 18 of the Lobbying Disclosure Act of 1995, 2 U.S.C. 1611)

B. Policies Regarding Potential Conflict of Interest in WIPA Service Delivery

All applicants applying for a cooperative agreement must fully document how they will ensure there will be no conflict of interest between providing work incentives planning and assistance services and delivering employment network-related services or protection and advocacy-related services to beneficiaries with disabilities in their employment efforts. In particular, they must demonstrate how issues will be resolved when a complaint or issue is against a CWIC or WIPA organization. Also, State Vocational Rehabilitation (VR) agencies and other organizations that are, or will apply to be a WIPA project, under SSA's Ticket to Work and Self-Sufficiency Program, must fully explain how they will resolve potential conflict of interest issues in the event it also receives a cooperative agreement to provide work incentives planning and assistance services. This is especially important in the areas of providing beneficiaries complete information regarding other organizations from which they may choose to receive employment services.

Note: SSA will not accept for further consideration applications for independent panel review that do not include documented policies and procedures regarding the resolution of potential conflict of interest issues as noted above.

C. Cost Sharing or Matching

Awardees of SSA cooperative agreements are required to contribute a non-Federal match of at least 5 percent toward the total cost of each project. The total cost of the project is the sum of the Federal share (up to 95 percent) and the non-Federal share (at least 5 percent). The non-Federal share may be cash or in-kind (property or services) contributions.

Note: SSA will not accept for further consideration applications for independent panel review that do not document their agreement to cost sharing/matching as noted above.

IV. Application and Submission Information

A. Address To Request Application

It is required that an electronic application be submitted through *www.grants.gov* for Funding Opportunity Number SSA–OESP–07–1 The *www.grants.gov*, ''Get Registered'' Web page is available to help explain the registration and application submission process. In addition, new Federal grant applicants may find the *Grants.gov* Registration Brochure on the above noted Web site to be helpful.

If you experience problems with the steps related to registering to do business with the Federal government or application submission, your first point of contact is the *Grants.gov* support staff at *support@grants.gov*, 1–800–518–4726. If your difficulties are not resolved, you may also contact the SSA Grants Management Team for assistance: Gary Stammer, 410–965–9501; Audrey Adams, 410–965–9469; Mary Biddle, 410–965–9503; Ann Dwayer, 410–965–9534; Phyllis Y. Smith, 410–965–9518.

If extenuating circumstances prevent you from submitting an application through *www.grants.gov*, please contact the SSA Grants Management Team for possible prior approval to download, complete and submit an application by mail. Please fax inquiries regarding the application process to the Grants Management Team at 410–966–9310 or mail to: Social Security Administration, Office of Acquisition and Grants, Grants Management Team, *Attention:* SSA–OESP–06–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, Md. 21244. To ensure receipt of the proper application package, please include program announcement number SSA–OESP–07–1 and the date of this announcement.

B. Content and Form of Application Submission

Prospective applicants are asked to submit, preferably by November 8, 2006 an e-mail, a fax, postcard, or letter of intent that includes:

(a) The program announcement number (SSA–OESP–07–1) and title, Work Incentives Planning and Assistance (WIPA) Program;

(b) The name of the agency or organization that is applying; and

(c) The name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person.

The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Office of Beneficiary Outreach and Employment Support, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *Jenny.Deboy@ssa.gov* or *Barbara.Jones@ssa.gov*.

C. Electronic Applications

When submitting an application electronically *www.grants.gov* automatically ensures a complete application is submitted.

D. Mailed Applications

Applications that are not submitted by December 15, 2006 are considered late applications. SSA will not waive or extend the deadline for any application unless the deadline is waived or extended for all applications. SSA will notify each late applicant that its application will not be considered. Applicants that do not have access to the Internet should contact the Office of Acquisitions and Grants Management Team for further details on how to complete an application.

All applications that meet the deadline of December 15, 2006 will be screened to determine completeness and conformity to the requirements of this announcement. Complete and conforming applications will then be evaluated.

—Length: The program narrative portion of the application may not exceed 50 double-spaced pages (or 25 single-spaced pages) on one side of the paper only, using standard (8½″ × 11″) size paper, and 12-point font. Attachments that support the program narrative count towards the 50-page limit; resumes and letters of support do not count within the 50-page limit.

E. Checklist for a Complete Application

The checklist below is a guide to ensure that the application package has been properly prepared.

— An original, signed and dated application plus at least two copies (if submitting paper application as opposed to an electronic application.) If submitting paper application, seven additional copies are optional but will expedite processing.

Note: When submitting an application electronically *www.grants.gov* automatically ensures a complete application is submitted.

— The project narrative portion of the application, which includes the applicant's detailed service delivery plan, may not exceed 50 double-spaced pages (25 single-spaced pages) on one side of the paper only, using standard (81/2'' x 11'') size paper, and 12-point font. Attachments that support the program narrative count towards the 50-page limit; resumes and letters of support do not count in the 50-page limit.

— Attachments/Appendices, when included, should be used only to provide supporting documentation. Please do not include books or videotapes as they are not easily reproduced and are therefore inaccessible to reviewers.

— A complete application, which consists of the following items in this order:

(1) Part I (Face page)—Application for Federal Assistance;

(2) Table of Contents;

(3) Brief Project Summary or Synopsis (not to exceed one page);

(4) Part II—Budget Information, Sections A through G;

(5) Budget Justification (in Section B Budget Categories, explain how amounts were computed), including subcontract organization budgets;

(6) Part III—Application Narrative and Appendices;

Note: Project Narrative should include the required detailed service delivery plan.

(7) Part IV—Assurances;

(8) Additional Assurances and Certifications—regarding Lobbying and regarding Drug-Free Workplace.

F. Guidelines for Application Submission

All applications for this cooperative agreement project must be submitted on the prescribed forms. The application shall be executed by an individual authorized to act for the applicant organization and to assume for the applicant organization the obligations imposed by the terms and conditions of the cooperative agreement award. Submission through *Grants.gov* generates signatures in all required fields. It is important that only an authorized representative submit the application.

In item 12 of the Face Sheet (SF 424), the applicant must clearly indicate the application submitted is in response to this announcement (SSA–OESP–07–1). The applicant also is encouraged to select a short descriptive project title.

Prospective applicants are asked to submit, preferably by November 8, 2006, an e-mail, fax, post card, or letter of intent that includes (1) the program announcement number (SSA–OESP–07–1) and title (Work Incentives Planning and Assistance (WIPA) Program); (2) the name of the agency or organization that is applying; and (3) the name, mailing address, e-mail address, telephone number, and fax number for the organization's contact person. The notice of intent is not required, is not binding, and does not enter into the review process of a subsequent application. The purpose of the notice of intent is to allow SSA staff to estimate the number of independent reviewers needed and to avoid potential conflicts of interest in the review. The notice of intent should be faxed to (410) 966–1278; mailed to Social Security Administration, Office of Employment Support Programs, Division of Employment Policy, 107 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401; or e-mailed to *Jenny.Deboy@ssa.gov* or *Barbara.Jones@ssa.gov*.

G. Submission Dates and Times

All applications must be submitted by the closing date of December 15, 2006. When authorized by the SSA Grants Management Team, applications may be mailed or hand-delivered to: Grants Management Team, Office of Acquisition and Grants, OAG, Social Security Administration, Attention: Attention: SSA–OESP–07–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, Md. 21244. Hand-delivered applications are accepted between the hours of 8 a.m. and 5 p.m., Monday through Friday. An application will be considered as meeting the deadline if it is either:

- Received from Grants.gov on or before the deadline date; or
- When a mailed application has been authorized by the Grants Management Team, received at the above address on or before the deadline date; or
- When a mailed application has been authorized by the Grants Management Team, mailed through the U.S. Postal Service or sent by commercial carrier on or before the deadline date and received in time to be considered during the competitive review and evaluation process. Packages must be postmarked by December 15, 2006. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier as evidence of timely mailing. Private-metered postmarks are not acceptable as proof of timely mailing.

H. Intergovernmental Review

The applicant organization is to check with your State's Single Point of Contact (SPOC) to find out about and comply with your State's process under Executive Order 12372. SPOCs are listed in the Office of Management and Budget's home page at: *http://www.whitehouse.gov/omb/grants/spoc.html*

I. Funding Restrictions

Construction expenses: SSA programs do not have construction authority but may support limited alteration and renovation costs. Amounts included under this category must be fully explained under Section F of the application.

J. Other Submission Requirements

Application packages are provided at *www.grants.gov*. If extenuating circumstances prevent you from submitting an application through *www.grants.gov* please contact the SSA Grants Management Team (at the Office of Acquisitions and Grants (OAG), Social Security Administration, Grants Management Team, Attention: SSA–OESP–07–1, 1st Floor-Rear Entrance, 7111 Security Blvd., Baltimore, Md. 21244.) for possible prior approval to download, complete and submit an application package by mail.

All applicants for Federal grants and cooperative agreements on or after October 1, 2003 are required to provide a Dun and Bradstreet (D&B) Data Universal Number System (DUNS) number. The DUNS number is required whether an applicant is submitting a paper application or using the government-wide electronic portal (Grants.gov). Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 1–866–705–5711.

V. Application Review Information

A. Criteria

Upon receipt, all applications will be reviewed to determine completeness and conformity to the requirements of this announcement. If an applicant is determined to be ineligible, or the application is incomplete or nonconforming to the requirements of this announcement, the application will be returned to the applicant and will no longer be considered for award. Applications that are complete and conform to the requirements of this announcement will then be forwarded to an independent panel of reviewers for evaluation.

B. Review and Selection Process

The results of this review and evaluation will assist the Commissioner of Social Security in making the award decision. Although the results of this review and evaluation are a primary factor considered in making the decisions, the evaluated score is not the only factor used. In selecting eligible applicants to be funded, consideration will be given to issues such as experience, past performance, proposed costs, the need to achieve an equitable distribution of WIPA projects among geographic regions of the country, as well as, the need to achieve an equitable distribution of WIPA projects among disability and minority populations.

There are four categories of criteria used to score applications: Relevance/adequacy of project design and scope; resources and management; quality assurance, and collaboration/partnerships. The total points possible for an application are 100. Following are the evaluation criteria that SSA will use in reviewing all applications (relative weights are shown in parentheses):

1. Relevance/Adequacy of Project Design and Scope (50 Points)

The adequacy of the project design and scope will be evaluated based on the following criteria in descending order of priority:

- The applicant's description of the project operations, including the project's documented knowledge of work incentives as they relate to employment and how the project will provide services to beneficiaries with disabilities regarding employment (e.g., identify how project will notify potential beneficiaries about the availability of work incentives planning and assistance services, location(s) for providing services, ability to travel to the beneficiary, etc) and the quality of the project design;
- Applicant's evidence that their project design and scope will successfully assist beneficiaries with disabilities obtain, regain or maintain gainful employment;
- The applicant's clear and concise statement of the project goals and objectives; and process(es) for collecting SSA required management information; specification of data sources; including how they will interact with the SSA approved national data base;
- The applicant's description of how the project will address provisions of work incentives planning, assistance and outreach to populations with special cultural or language requirements specific to their geographic area;
- The applicant's plan for providing work incentives planning, assistance and outreach to transition-to-work aged SSI youth;
- The applicant's identification of problems that may arise and how they will be resolved; e.g., how dropouts and inadequate numbers of beneficiary participants will be handled.
- If appropriate in the applicant's State or Region, a plan for providing seamless employment services to individuals seeking to enter the workforce through the SSA DOL/ETA Disability Program Navigator (DPN) initiative and existing Employment Networks (ENs).

Note: Applicants in a State or Region that do not have a DPN or EN need not address this issue in their application and may receive all available points for this criteria. Evaluation panels will not use this sub-criteria in the application evaluation for those States or Regions where it is not applicable.

- If appropriate in the applicant's State, a plan for providing work incentives planning, assistance and outreach to States involved in the Youth Transition Process Demonstration;

Note: Applicants in a State or Region that do not have a YTD need not address this issue in their application and may receive all available points for this criteria. Evaluation panels will not use these sub-criteria in the application evaluation for those States or Regions where it is not applicable.

2. Resources and Management (20 Points)

Resources and management will be evaluated based on the following:

- The applicant's documentation that the Project Directors and CWICs have the necessary experience to successfully implement the program requirements described in this RFA; (Specifically, projects successfully involving return-to-work initiatives for SSDI and SSI beneficiaries with disabilities.)
- The applicant's description and adequacy of the proposed infrastructure and organization of the project, including the existence of the necessary administrative resources to effectively carry out the program requirements;
- The applicant's plan for providing personnel who meet the qualification criteria cited in this RFA under Section I as evidenced by training and experience which indicates that they have the skills required to competently provide work incentives planning and assistance services;
- The applicant's plan for providing staff members who are individuals with disabilities to conduct the day-to-day operational functions;
- The applicant's evidence of sufficient resources, including personnel, time, funds, and facilities that will be available to support beneficiaries with disabilities obtain, maintain or regain employment under this program. The applicant's evidence of adequate facilities should include accessibility to public transportation, elevators, and ramps.

3. Quality Assurance (20 Points)

The applicant's quality assurance plan will be evaluated based on the following:

- The applicant's plan for ensuring ongoing training needs (refresher and update training) of CWICs and other personnel, as appropriate, to ensure that personnel maintain knowledge, skills,

and abilities as required to perform their job duties;

• The applicant's plan for using management information data and caseload reviews to improve processes, such as beneficiary case-management and follow-up services, and to ensure that all work incentives information given to beneficiaries is accurate and applicable. The applicant's plan must include how it intends to track the progress and outcomes of beneficiaries based on services provided by the CWIC. SSA is interested in identifying beneficiary outcomes under the WIPA Program to determine the extent to which beneficiaries with disabilities achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect beneficiary specific data regarding the employment status, benefit status, and income of beneficiaries before and after providing services under these cooperative agreements;

• The applicant's evidence of existing case management and monitoring systems and techniques, including a management information system;

• The applicant's detailed quality assurance plan and how well it complies with the requirements of this RFA in terms of data collection, reporting, and ensuring that only accurate information is provided to beneficiaries with disabilities and other interested parties, as appropriate.

4. Collaboration/Partnerships (10 Points)

The applicant's collaborative activities and partnerships will be evaluated based on the following:

• Evidence of the applicant's working relationship with the local DOL One-Stop Career Center;

• Applicant's evidence of other collaborative activities with relevant agencies, *e.g.*, Vocational Rehabilitation, Centers for Medicare and Medicaid Services (CMS), Dept. of Education, Minority Commission, Workforce Centers, Employment Networks, and Mental Health organizations, in providing work incentives planning and assistance services; and the extent to which the applicant partnered in collaborative efforts with these organizations, including letters of intent or written assurances from cited organizations;

• The applicant's plan to work in collaboration/cooperation with the PMRO.

Note: Additional information regarding how WIPA projects will work with the PMRO may be found at *http://www.socialsecurity.gov/work/WIPARFA.html*

VI. Award Administration Information

A. Award Notices

A cooperative agreement award will be issued within the constraints of available Federal funds and at the discretion of SSA. The official award document is the ''Notice of Cooperative Agreement Award.'' It will provide the amount of the award, the purpose of the award, the term of the agreement, the total project period for which support is contemplated, the amount of financial participation required, and any special terms and conditions of the cooperative agreement. The Notice of Cooperative Agreement Award signed by the Grants Officer is the authorizing document. These awards will be issued via e-mail.

B. Administrative and National Policy Requirements

No administrative or national policy requirements have been identified by SSA for the WIPA Program.

C. Reporting

Entities must provide all collected data and report the results to SSA's Office of Acquisition and Grants, Grants Management Team (OAG, GMT), as described below.

The entities awarded a cooperative agreement under this notice shall submit quarterly progress reports to OAG, GMT. SSA expects that the project will need a period of time to begin providing services and collecting management information. Therefore, the first quarterly program report shall include a description of the project, a status of data collection operations, actions that were taken, actions planned, and a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in work incentives planning and in carrying out outreach activities.

Subsequent quarterly program reports shall provide: a status of the project, problems or proposed changes in the project (*e.g.*, requests for technical assistance from contractor, interagency agreement change); specific information (baseline data/program statistics) required by SSA, including those listed above; a description of how the project is addressing the needs of individuals with disabilities from diverse ethnic and racial communities, both in work incentives planning and outreach activities; quality assurance measures, goals achieved, collaboration activities, outcomes achieved by beneficiaries served including success stories involving employment, actions that were taken and have been planned. The quarterly program reports shall be submitted to SSA, OAG, within 30 days after the end of the quarter. Financial status reports shall be submitted bi-annually. The first report is due within 30 days after the end of the first six month period and a final report is due within 90 days after the end of the budget period.

SSA personnel (SSA Project Officer and/or other staff) expect to visit projects at least once in each year of the cooperative agreement. The SSA Project Officer shall review site operations, collect management information, assess the quality assurance plan and goal achievement, and evaluate how projects are finding ways to make work incentives planning and assistance activities more effective in achieving SSA's program goals.

Staff members shall attend an initial orientation meeting that will include an orientation session by SSA and subsequent scheduled conferences at SSA headquarters or alternate sites chosen by SSA. Those meetings will provide the awardee of the cooperative agreement with the opportunity to exchange information with SSA and other awardees.

D. MI Program Data To Be Collected and Reported

Common data elements will be collected through a national on-line database. The awardees and SSA will use the management information (MI) data to manage the project and to determine what additional resources or other approaches may be needed to improve the process. The data will also be valuable to SSA in its analysis of and future planning for the SSDI and SSI programs. SSA is interested in identifying participant outcomes under the WIPA Program to determine the extent to which participants achieve their employment, financial, and health care goals. Therefore, SSA is requiring that cooperative agreement awardees collect data regarding the employment status, benefit status, and income of beneficiaries before and after providing services in order to help ensure that SSA beneficiaries with disabilities are gaining effective supports and follow-up services needed to move towards gainful employment.

Data to be collected will include information about:

Beneficiaries' demographic characteristics;

Beneficiaries' Social Security Numbers (SSNs);

Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);

Beneficiaries' non-income support characteristics (including access to public and private health care);

Beneficiaries' work goals and strategies;

Beneficiaries' use of SSA's work incentives;

Isolated outreach activities for evaluation purposes; and

Employment outcomes.

The projects will collect, analyze, and summarize the specific data elements listed below:

A. Beneficiary information:

1. Beneficiary/recipient name (Last, First, Middle);
2. Date of birth;
3. Gender;
4. Special language or other consideration;
5. Mailing address;
6. Telephone number;
7. Social Security Number (SSN);
8. Representative payee (RP) name (if applicable);
9. RP address;
10. Current level of education;
11. Whether pursuing education currently and at what level (e.g., post secondary, continuing adult education, special education, vocational education);
12. Proposed educational goals;
13. Primary diagnosis;
14. Secondary diagnosis (if applicable);
15. Employer health care coverage at outset (if working);
16. Other health care coverage.

B. Employment Information and Outcomes: (current and proposed goals—when applicable.)

1. Self-employed or employee;
2. Type of work;
3. Beginning date;
4. Hours per week;
5. Monthly gross earned income;
6. Monthly net earned income;
7. Work-related expenses;

C. Program Manager for Recruitment and Outreach (PMRO) Activities:

1. Dates, times, location and attendance information on work incentives education seminars and other Ticket to Work Marketing sessions conducted in collaboration with the PMRO;
2. Beneficiaries' income support characteristics (including earnings and SSA and non-SSA benefits);
3. Beneficiaries' non-income support characteristics (including access to public and private health care);
4. Beneficiaries' identified work goals and strategies for attaining successful employment outcomes (For example, will a beneficiary need to seek additional training or education in order to attain an identified employment outcome?);
5. Other local outreach activities conducted by the project for further evaluation purposes;

D. Benefits: (current and expected changes if employment goals are reached)

1. SSDI;
2. SSI;
3. Concurrent (SSDI and SSI);
4. Medicare;
5. Medicaid;
6. Private Health Insurance;
7. Subsidized housing or other rental subsidies;
8. Food Stamps;
9. General Assistance;
10. Workers Compensation benefits;
11. Unemployment Insurance benefits;
12. Other Federal, State, or local supports, including TANF (specify).

E. Incentives to be used:

1. Trial-work period (TWP);
2. Extended period of eligibility (EPE);
3. Impairment-related work expenses (IRWE);
4. Plan for achieving self-support (PASS);
5. 1619(a);
6. Continuing Medicaid (1619(b));
7. Medicaid buy-in provisions/ Balanced Budget Act;
8. Blind Work Expense;
9. Student Earned Income Exclusion;
10. Subsidy Development;
11. Extended Medicare;
12. Property Essential to Self-Support;
13. Earned Income Exclusion;
14. SGA limits (unsuccessful work attempt, subsidy, unincurred business expenses, etc.).

F. Services to be used:

1. Vocational Rehabilitation services;
2. Para-transit services;
3. Protection and Advocacy services;
4. Work-related training/counseling program;
5. USDOL/ETA One-Stop Career Center services;
6. Transitioning youth services (from school to post-secondary education or to work);
7. Employment Network services;
8. Services for beneficiaries with visual impairments (i.e., service animals);
9. Employer Referral and Assistance Network (EARN);
10. Other Advocacy-related Services.

G. Monthly Work Incentives Planning and Assistance (WIPA) activities performed:

1. Number of SSDI/SSI beneficiaries (over age 18) requesting assistance (initial and repeat requests);
2. Number of SSDI/SSI beneficiaries (ages 14 to 18) requesting assistance (initial and repeat requests);
3. Number of new work incentives plans prepared;
4. Number of updated work incentives plans prepared;
5. Number of presentations given at forums, conferences, meetings, etc.;
6. Number of work incentives education and Ticket to Work marketing sessions conducted in collaboration with the PMRO;
7. Number of follow-up contacts with beneficiaries;
8. Number of times exhibited at forums, conferences, meetings, etc.;
9. Number of contacts with Area Work Incentives Coordinators (AWICs).

Additional information such as the time spent per beneficiary/recipient, beneficiary's waiting time for a response, waiting time for an appointment and for services, the reason for service request, the level of service provided, and any anticipated or verified employment status change of the beneficiary will also be reported by awardee. All data elements are to be collected through an SSA approved national online database, in order to allow for analysis of project efficacy and the comparability of the data across project sites.

The application requirements in Part IV are the minimum amount of required project information. Projects will be responsible for collecting management information (MI), producing regular reports, and producing a final report which analyzes the successes and/or failures of the methodology used to provide work incentives planning and assistance services to SSDI and SSI beneficiaries.

Note: Reporting guidelines are outlined in Section VI (Award Administration Information) Part 2: Reporting; and, Part 3: Management Information Program Data to be Collected and Reported.

All projects must adhere to SSA's Privacy and Confidentiality Regulations (20 CFR part 401) for maintaining records of individuals, as well as provide specific safeguards surrounding beneficiary information sharing, paper/ computer records/data, and other issues potentially arising from providing work incentives planning and assistance services to SSDI and SSI beneficiaries with disabilities. Beneficiary data should be accessible only to project personnel via locked file cabinets, computer password protections, etc.

VII. Agency Contacts

Send questions about this announcement to the following Internet e-mail addresses: *Jenny.Deboy@ssa.gov* or *Barbara.Jones@ssa.gov*. When sending in a question, reference program announcement number SSA–

OESP–07–1 and the date of this announcement.

For information regarding the application submission process, you may also contact: Phyllis Y. Smith or Gary Stammer, Grants Management Team, Office of Acquisition and Grants, Social Security Administration, 1st Floor—Rear Entrance, 7111 Security Blvd., Baltimore, MD 21244. The telephone numbers are: Phyllis Y. Smith, (410) 965–9518, or Gary Stammer, (410) 965–9501. The fax number is (410) 966–9310.

VIII. Other Information

Process Evaluation

SSA plans to conduct a formal independent process evaluation of the WIPA Program, as well as individual projects, beginning in FY2007 to further assess the overall efficacy of the program in terms of assisting beneficiaries with disabilities return to work. The purpose of a process evaluation is for SSA and the awardees to assess how the WIPA Program functions and how the process (es) might be improved to provide more efficient and effective work incentives services, as required under section 1149 of the Act. The process evaluation will require both data collection and qualitative observational evaluation through site visits and/or project reporting.

Participant Experience

The goal of these cooperative agreements is the provision of services to enhance beneficiary awareness and understanding of SSA work incentives and thereby enhance a beneficiaries' ability to make informed choices regarding work. The goal is not to provide employment services, however employment is ultimately the key for many beneficiaries with disabilities in terms of gaining greater self-sufficiency.

Projects shall submit periodic reports to SSA, OAG. Data and information that are used in preparing the reports can be used, for example, to improve the efficiency of the project's operations, use of staff, and linkages between the project and the programs for which work incentives planning is needed to better meet the needs of target populations. In addition, the evaluation results will be disseminated to other projects to promote learning, program refinements, and facilitate partnership and achievement of project objectives. Timely comprehensive MI data also allows for cost accounting, which helps improve the efficiency of service approaches and may inform future policy decisions.

Paperwork Reduction Act

This notice contains reporting requirements. The information is collected by the *Grants.gov* Apply facility. However, in rare circumstances, the information may be collected using form SSA–96–BK, Federal Assistance Application, which has the Office of Management and Budget clearance number 0960–0184.

Dated: October 10, 2006.

Martin H. Gerry,

Deputy Commissioner for Disability and Income Security Programs.

[FR Doc. E6–17283 Filed 10–16–06; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2006–0077]

Work Incentives Planning and Assistance (WIPA) Program Pre-Application Teleconference Seminars

AGENCY: Social Security Administration (SSA).

ACTION: Notice of Teleconferences.

DATES: October 26, 2006

Time: 1 p.m. (Eastern Time) duration two hours.

Call-in telephone number: (toll free) 877–922–4780.

Pass code: WIPA.

Leader: Debbie Morrison.

October 27, 2006

Time: 4 p.m. (Eastern Time) duration two hours.

Call-in telephone number: (toll free) 877–922–4780.

Pass code: WIPA.

Leader: Debbie Morrison.

SUPPLEMENTARY INFORMATION:

Type of meeting: Informational pre-application teleconference seminars open to all potential applicants for the Work Incentives Planning and Assistance (WIPA) Program (formerly the Benefits Planning, Assistance and Outreach (BPAO) Program).

Purpose: SSA will hold informational pre-application teleconference seminars to solicit interest and encourage community-based organizations to apply for cooperative agreement awards. All interested applicants are invited to attend this call.

Section 1149(d) of the Social Security Act (as added by Section 121 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170) required SSA to establish community based benefits planning and assistance in every State, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, and the Virgin Islands. As authorized by Ticket to Work and Work Incentives Improvement Act, SSA established a program of cooperative agreements (monetary awards) granted to community-based organizations. These programs were formerly called the Benefit Planning and Assistance programs (BPAO). The new name for this program is the Work Incentive Planning and Assistance (WIPA) Projects. The WIPA program is to provide all of SSA's beneficiaries with disabilities access to work incentives planning and assistance services. Section 407 of the Social Security Protection Act (Pub. L. 108–203) extended the authorization of this program through Fiscal Year 2009.

SSA released a competitive Request for Applications in May 2006 but did not receive sufficient qualifying proposals to provide full national coverage. In October 2006 SSA released a competitive Request for Applications to announce funding availability for new cooperative agreements awards for the Work Incentives Planning and Assistance (WIPA) Program, for these specific areas:

State of Alabama, the counties of Autauga, Baldwin, Barbour, Bullock, Butler, Choctaw, Clarke, Coffee, Conecuh, Covington, Crenshaw, Dale, Dallas, Elmore, Escambia, Geneva, Henry, Houston, Lee, Lowndes, Macon, Marengo, Mobile, Monroe, Montgomery, Pike, Russell, Washington, and Wilcox;

State of Indiana, the counties of Clark, Crawford, Davies, Dearborn, Dubois, Floyd, Gibson, Grant, Greene, Harrison, Hendricks, Jackson, Jefferson, Jennings, Knox, Lawrence, Martin, Monroe, Ohio, Orange, Parke, Perry, Pike, Posey, Ripley, Scott, Spencer, Sullivan, Switzerland, Vanderburgh, Vermillion, Vigo, Warrick, Washington, and White;

State of Kentucky, the counties of Bath, Bell, Bourbon, Boyd, Bracken, Breathitt, Carter, Clark, Clay, Elliott, Estill, Fleming, Floyd, Garrard, Greenup, Harlan, Harrison, Jackson, Johnson, Knott, Knox, Laurel, Lawrence, Lee, Leslie, Letcher, Lewis, Madison, Magoffin, Martin, Mason, McCreary, Menifee, Montgomery, Morgan, Nicholas, Owsley, Pendleton, Perry, Pike, Powell, Robertson, Rockcastle, Rowan, Whitley, and Wolfe;

State of Nevada, all counties;

State of New York, the counties of Albany, Columbia, Dutchess, Greene, Orange, Putnam, Rockland, Ulster, and Westchester;

State of Ohio, the counties of Ashtabula, Mahoning, Portage, Stark, Summit, and Trumbull;

Pacific territories of Guam, the Northern Mariana Islands, and American Samoa to be effective in calendar year 2007.

The schedule (including date, time and call-in number of each pre-application seminar as it becomes available) will also be posted at the following Internet site: *http://www.socialsecurity.gov/work.*

Agenda: SSA will use the seminars to provide guidance and technical assistance to interested parties as they prepare to submit their applications. There will be a presentation of information followed by an operator-assisted question and answer period. The agenda will be posted on the Internet at *http://www.socialsecurity.gov/work* one week before commencement of the seminars. The agenda can also be requested electronically or by fax upon request.

Contact Information: Anyone requiring additional information should contact SSA Project Officer, Debbie Morrison by calling (410) 965–9054, or

- Mail addressed to Social Security Administration, 6401 Security Blvd., Room 107 Altmeyer Building, Baltimore, MD 21235.
- Fax at (410) 966–1278.
- E-mail to *debbie.morrison@ssa.gov.*

Dated: October 10, 2006.

Martin H. Gerry,

Deputy Commissioner for, Disability and Income Security Program.

[FR Doc. 06–8730 Filed 10–16–06; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF SPECIAL COUNSEL

No FEAR Act Notice

AGENCY: Office of Special Counsel

ACTION: Notice.

SUMMARY: The U.S. Office of Special Counsel (OSC) is publishing its notice under the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174), as required by the Act and 5 CFR 724.

DATES: October 17, 2006.

FOR FURTHER INFORMATION CONTACT: Dorothy Timbs, Special Assistant, by mail at 1730 M Street, NW, Suite 218, Washington, DC 20036; by telephone, at (202) 254–3643; or by fax, at (202) 653–5161. Additional information can be found on OSC's web site at http://www.osc.gov.

SUPPLEMENTARY INFORMATION: Under the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002'' (known as the No FEAR Act), agencies are required to notify employees, former employees, and applicants of their rights and remedies under Federal antidiscrimination and whistleblower protection laws applicable to them. The Office of Personnel Management (OPM) has published implementing regulations at 5 CFR 724, which require notice and training, and include model language for agency notices.

For these reasons, OSC is publishing this No FEAR Act Notice (also published on the agency's web site at http://www.osc.gov):

On May 15, 2002, Congress enacted the ''Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,'' which is now known as the No FEAR Act. One purpose of the Act is to ''require that Federal agencies be accountable for violations of antidiscrimination and whistleblower protection laws.'' Public Law 107–174, Summary. In support of this purpose, Congress found that ''agencies cannot be run effectively if those agencies practice or tolerate discrimination.'' Public Law 107–174, Title I, General Provisions, section 101(1).

The Act also requires this agency to provide this notice to Federal employees, former Federal employees and applicants for Federal employment to inform you of the rights and protections available to you under Federal antidiscrimination and whistleblower protection laws.

Antidiscrimination Laws

A Federal agency cannot discriminate against an employee or applicant with respect to the terms, conditions or privileges of employment on the basis of race, color, religion, sex, national origin, age, disability, marital status or political affiliation. Discrimination on these bases is prohibited by one or more of the following statutes: 5 U.S.C. 2302(b)(1), 29 U.S.C. 206(d), 29 U.S.C. 631, 29 U.S.C. 633a, 29 U.S.C. 791 and 42 U.S.C. 2000e–16.

If you believe that you have been the victim of unlawful discrimination on the basis of race, color, religion, sex, national origin or disability, you must contact an Equal Employment Opportunity (EEO) counselor within 45 calendar days of the alleged discriminatory action, or, in the case of a personnel action, within 45 calendar days of the effective date of the action, before you can file a formal complaint of discrimination with your agency. See, e.g., 29 CFR 1614. If you believe that you have been the victim of unlawful discrimination on the basis of age, you must either contact an EEO counselor as noted above or give notice of intent to sue to the Equal Employment Opportunity Commission (EEOC) within 180 calendar days of the alleged discriminatory action. If you are alleging discrimination based on marital status or political affiliation, you may file a written complaint with the U.S. Office of Special Counsel (OSC) (see contact information below). In 1the alternative (or in some cases, in addition), you may pursue a discrimination complaint by filing a grievance through your agency's administrative or negotiated grievance procedures, if such procedures apply and are available.

Whistleblower Protection Laws

A Federal employee with authority to take, direct others to take, recommend or approve any personnel action must not use that authority to take or fail to take, or threaten to take or fail to take, a personnel action against an employee or applicant because of disclosure of information by that individual that is reasonably believed to evidence violations of law, rule or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, unless disclosure of such information is specifically prohibited by law and such information is specifically required by Executive order to be kept secret in the interest of national defense or the conduct of foreign affairs. Retaliation against an employee or applicant for making a protected disclosure is prohibited by 5 U.S.C. 2302(b)(8). If you believe that you have been the victim of whistleblower retaliation, you may file a written complaint (Form OSC–11) with the U.S. Office of Special Counsel at 1730 M Street NW., Suite 218, Washington, DC 20036–4505, or online through the OSC Web site (at http://www.osc.gov).

Retaliation for Engaging in Protected Activity

A Federal agency cannot retaliate against an employee or applicant because that individual exercises his or her rights under any of the Federal antidiscrimination or whistleblower protection laws listed above. If you believe that you are the victim of retaliation for engaging in protected activity, you must follow, as appropriate, the procedures described in the Antidiscrimination Laws and Whistleblower Protection Laws sections above (including, if applicable, administrative or negotiated grievance procedures) in order to pursue any legal remedy.

Disciplinary Actions

Under the existing laws, each agency retains the right, where appropriate, to discipline a Federal employee for conduct that is inconsistent with Federal antidiscrimination and whistleblower protection laws, up to and including removal. If OSC has initiated an investigation under 5 U.S.C. 1214, however, according to 5 U.S.C. 1214(f), agencies must seek approval from the Special Counsel to discipline employees for, among other activities, engaging in prohibited retaliation. Nothing in the No FEAR Act alters existing laws or permits an agency to take unfounded disciplinary action against a Federal employee or to violate the procedural rights of a Federal employee who has been accused of discrimination.

Additional Information

For further information regarding the No FEAR Act regulations, refer to 5 CFR part 724, as well as the appropriate offices within your agency (e.g., EEO/civil rights office, human resources office, or legal office). Additional information regarding Federal antidiscrimination, whistleblower protection and retaliation laws can be found at the EEOC Web site (http://www.eeoc.gov) and the OSC Web site (http://www.osc.gov).

Existing Rights Unchanged

Pursuant to section 205 of the No FEAR Act, neither the Act nor this notice creates, expands or reduces any rights otherwise available to any employee, former employee or applicant under the laws of the United States, including the provisions of law specified in 5 U.S.C. 2302(d).

Dated: October 11, 2006.

Scott J. Bloch,

Special Counsel.

[FR Doc. E6–17171 Filed 10–16–06; 8:45 am]

BILLING CODE 7405–01–S

DEPARTMENT OF STATE

[Public Notice 5581]

Culturally Significant Objects Imported for Exhibition Determinations: ''Masterpieces of Russian Art''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Masterpieces of Russian Art'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at The Museum of Russian Art, Minneapolis, Minnesota, from on or about October 20, 2006 until on or about December 30, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: October 10, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–17234 Filed 10–16–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2004–18898]

Comprehensive Safety Analysis 2010 Initiative

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Notice of public listening session.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) is holding a public listening session to obtain feedback on the Agency's Comprehensive Safety Analysis 2010 initiative (CSA 2010), a comprehensive review and analysis of FMCSA's current commercial motor carrier safety and enforcement programs. FMCSA will use the upcoming listening session to inform the public on the conceptual direction and progress of CSA 2010, and obtain feedback from its partners and stakeholders. To facilitate the upcoming listening session, FMCSA has included in this notice a number of questions that commenters are invited to address.

DATES: The Public Listening Session will be held on November 16, 2006 from 8 a.m. to 1:30 p.m. Written comments must be received by December 18, 2006.

Location: The Public Listening Session will be held at the Hyatt Regency on Capitol Hill, 400 New Jersey Avenue, NW., Washington, DC 20001. The telephone number is (202) 737–1234.

ADDRESSES: You may submit comments identified by DOT Docket Management System (DMS) docket number FMCSA–2004–18898, using any of the following methods:

Web site: http://dmses.dot.gov. Follow the instructions for submitting comments on the DOT electronic docket site.

Fax: 202–493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.

Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Cathy McNair, Assistant Program Manager, CSA 2010, (202) 366–0790.

SUPPLEMENTARY INFORMATION: *Format of Listening Session:* During the Public Listening Session, FMCSA will describe its progress on CSA 2010 to date. FMCSA will accept comments on the CSA 2010 operational model and any additional information FMCSA should consider to promote the success of the CSA 2010 initiative.

The listening session will run from 8 a.m. to 1:30 p.m. Participant registration will be from 8 a.m. to 9 a.m. The session will include a morning plenary session (9 a.m.) and four facilitated breakout sessions (10:15 a.m. to 1:30 p.m.), related to the CSA 2010 operational model: (1) Measurement, (2) Safety Fitness Determination, (3) Intervention Selection, and (4) Safety Data and Validation. Attendees will be able to participate in one of the breakout sessions and will have an opportunity to comment on the key questions listed herein by topic, as well as hear the comments of other stakeholders assigned to the topic. More details on this process are included in the on-line pre-registration site.

Registration information and instructions: To attend the listening session, attendees can register online at *http://www.csa2010.com.* In addition to registration information, the registration Web site provides additional location and agenda details. To register, click the Register button on the left side of the homepage to display the online registration form. The registration form requests information about the attendee and breakout session preference. Due to size and space limitations, attendees may not be assigned to their first breakout session preference; however, FMCSA will strive to accommodate attendees' first or second choice. Once the form is complete, submit the form to complete the registration process and a registration confirmation will appear. If there are any questions, or if you prefer to register via telephone, please contact *admin@csa2010.com* or telephone (301) 495–8458.

Instructions for submitting written comments: Comments regarding CSA 2010 can also be filed with the Department of Transportation's Docket Management System (DMS). All submissions must include the Agency name and docket number for this Notice. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Statement heading for further information.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or the docket (see **ADDRESSES** section above). If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope, postcard, or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477; Apr. 11, 2000). This information is also available at *http://dms.dot.gov.*

Background

In August 2004, FMCSA embarked on CSA 2010—a comprehensive review and analysis of FMCSA's current commercial motor vehicle safety compliance and enforcement programs (69 FR 51748, August 20, 2004). The goal of CSA 2010 is the development and deployment of a new operational model, a new approach to using FMCSA resources to identify drivers and operators that pose safety problems and to intervene to address those problems. FMCSA understands how important it is to the success of this initiative to obtain active and timely feedback from its partners and stakeholders. The Agency held a series of public listening sessions on CSA 2010 in September and October of 2004. These sessions were designed to collect public input regarding ways FMCSA could improve its process of monitoring and assessing the safety performance of the commercial motor carrier industry. Participants were a cross section of individuals including industry executives, truck and bus drivers, insurance and safety advocacy groups, State and local government officials, and enforcement professionals. FMCSA was encouraged that the majority of participants supported the agency's goal of improving the current process through the CSA 2010 initiative.

During the 2004 listening sessions, the stakeholder community expressed many different opinions regarding the various entities, activities, and environmental factors that contribute to safety. The sessions highlighted that safety indicators can be difficult to identify and measure. Participants also commented on the effectiveness of current processes and offered creative ideas for FMCSA to consider when crafting new policies and processes. For example, in almost every listening session, participants suggested using incentives rather than penalties to encourage safe behavior. Participants expressed a strong interest in comprehensive, consistent, relevant, and accurate data that are easily accessible to all. Some participants expressed a willingness to self-disclose data and to help keep safety data current. For further detail on the public listening sessions, visit FMCSA's Web site at *http://www.fmcsa.dot.gov/safety-security/csalisteningsessions.htm* and see the final report, ''Comprehensive Safety Analysis Listening Sessions.''

On July 20, 1998, the Agency issued an Advanced Notice of Proposed Rulemaking (ANPRM), entitled ''Safety Fitness Procedures'' (63 FR 38788), seeking comments and supporting data on the issues that should be considered in developing a future safety fitness rating system. Many of the participants in the 2004 listening sessions suggested that FMCSA delay publishing a notice of proposed rulemaking until the Agency makes its final decisions regarding its long-term plan for monitoring safety under CSA 2010. Accordingly, the Agency withdrew the ANPRM (70 FR 67405, November 7, 2005).

Recently, FMCSA requested comments from the public on planned improvements to the Agency's Motor Carrier Safety Status Measurement System (SAFESTAT) algorithm (71 FR 36170, May 3, 2006). The SAFESTAT system analyzes current and historical safety performance and compliance information to rank the relative safety fitness of commercial motor carriers. SAFESTAT enables FMCSA to quantify and monitor trends in the safety status of individual motor carriers. FMCSA focuses compliance review and roadside inspection resources on carriers posing the greatest potential safety risk. SAFESTAT involves analytically assessing a motor carrier in four Safety Evaluation Areas (SEAs), including: (1) Accident, (2) Driver, (3) Vehicle, and (4) Safety Management. The Agency has proposed improvements that would simplify the Accident SEA, increase the relevance of moving violations in the Driver SEA, include in the Vehicle SEA vehicle out-of-service violations from inspections marked as driver-only, and shorten the data exposure time period considered by SAFESTAT from 30 months to 24 months. The proposed improvements are intended to make the algorithm more effective in identifying motor carriers that pose a high crash risk. The proposed changes are also consistent with FMCSA's CSA 2010 initiative. The ultimate goal of CSA 2010 is development of an optimal operational model that will allow FMCSA to focus its limited resources on improving the safety performance of high-risk operators. The comment period closed July 3, 2006.

The results of FMCSA's recent Large Truck Crash Causation Study also provide important input for the development of a new operational model. This study was the first nationwide examination focused on pre-crash factors. Study findings indicate that drivers of large trucks and other vehicles involved in truck crashes are ten times more likely to be the cause of the crash than other factors, such as weather, road conditions, and vehicle performance. These results suggest that efforts to assess safety performance and to apply interventions to improve performance should focus on drivers. Among the changes under consideration in CSA 2010 are several that would improve the data collected on drivers and would add interventions applicable to individual drivers. Additional information on the Large Truck Crash Causation Study is available at *http://www.fmcsa.dot.gov.*

Upcoming Listening Session: The purpose of the upcoming listening session is for FMCSA to update its stakeholders and partners on the progress that has been made since the listening sessions in 2004. To facilitate the upcoming listening session, FMCSA has included in this notice a number of questions designed to elicit input on possible features of the CSA 2010 operational model. In responding to the questions commenters are requested to provide supporting rationale, and supporting documentation wherever possible. FMCSA plans to hold annual CSA 2010 listening sessions to continue the process of updating partners and stakeholders and receiving feedback.

Current Operational Model: To understand FMCSA's goals for assessing and improving motor carrier safety, it is important to understand the Agency's current process. FMCSA currently collects several kinds of data on motor carriers, including Federal and State information on crashes and roadside inspections, results of on-site compliance reviews, and enforcement actions. FMCSA uses the data to (1) determine which motor carriers should be selected for on-site compliance reviews, and (2) determine the safety fitness of motor carriers. To analyze the data it collects, the Agency uses SAFESTAT.

Each month, SAFESTAT generates a list of high-priority motor carriers for which FMCSA plans compliance review visits. In selecting motor carriers for compliance reviews, SAFESTAT works with four SEAs referenced above: (1) Accident, (2) Driver, (3) Vehicle, and (4) Safety Management. For a full description of the SAFESTAT methodology, visit FMCSA's Web site at: *http://ai.fmcsa.dot.gov.*

FMCSA issues a safety fitness determination and a corresponding safety rating as a result of an on-site compliance review (CR). The CR assesses whether a commercial motor carrier's safety management controls are functioning effectively to ensure acceptable compliance with the safety fitness standard found at 49 CFR 385.5. Currently, the safety ratings that result from a CR are Satisfactory, Conditional, or Unsatisfactory. FMCSA may take enforcement actions against a motor carrier as a result of the CR.

Limitations of the Current Operational Model

FMCSA's compliance and safety programs improve and promote safety performance. However, despite increases in the regulated population, as well as increased programmatic responsibilities, Agency resources available for these efforts have remained relatively constant over time. In its present structure, FMCSA's CR program is resource-intensive and reaches only a small percentage of motor carriers. On-site CRs take one safety investigator an average of 3 to 4 days to complete, and thereby determine a motor carrier's safety fitness. At present staffing levels FMCSA can perform CRs on only a small portion of the 700,000 active interstate motor carriers. These factors have made it increasingly difficult to make sustained improvements to motor carrier safety using existing programs and information systems. In addition, the Large Truck Crash Causation Study clearly indicates that increased attention should be given to drivers. Although FMCSA determines, to a limited extent, the compliance and safety of commercial motor vehicle drivers and pursues enforcement against them if warranted, current FMCSA systems do not evaluate the safety fitness of individual commercial motor vehicle drivers.

For these reasons FMCSA is exploring ways through CSA 2010 to improve its current processes for monitoring and assessing the safety performance of motor carriers and drivers.

New Operational Model—CSA 2010

The goal of CSA 2010 is to develop a new approach to assessing the motor carrier safety performance of a larger segment of the motor carrier industry, while optimizing the use of Agency resources. CSA 2010 is designed to help FMCSA affect a larger number of motor carriers and drivers using a broader array of compliance interventions. In conceptualizing a new operational model, FMCSA began with a list of ideal attributes and components that it believes should be part of any model for safety oversight:

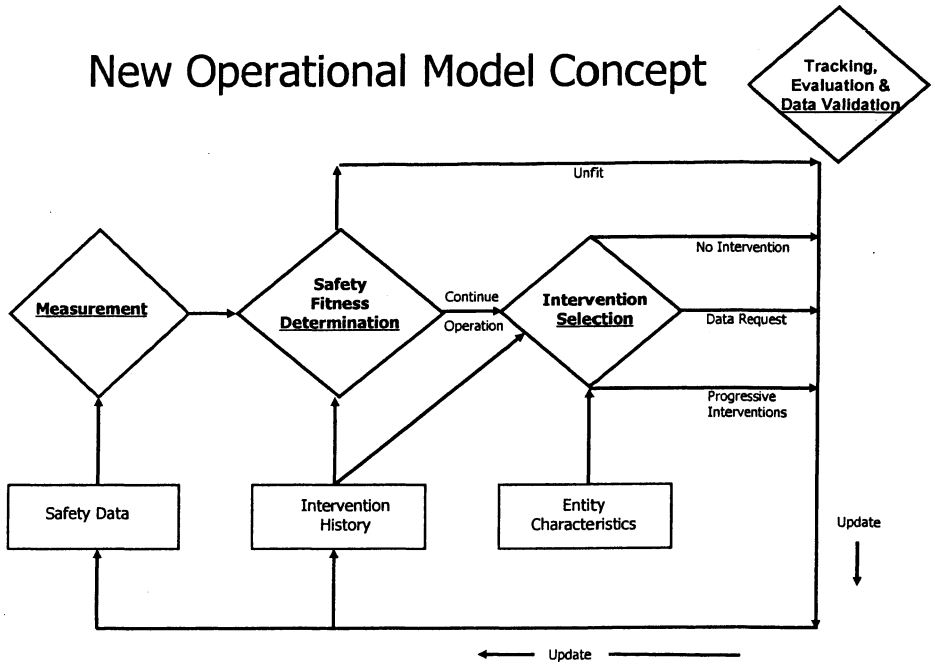
Flexible—Adaptable to Changing Environment. Accommodate changes to the transportation environment, such as evolutions in technology and changing programmatic responsibilities.

Efficient—Maximize Use of Resources. Produce greater efficiencies by maximizing use of resources to improve Agency productivity, as well as the safety performance of members of the motor carrier community.

Effective—Improve Safety Performance. Increase the quality of contact with the motor carrier community by identifying those behaviors associated with poor safety, and focusing compliance and safety efforts on those unsafe behaviors.

Innovative—Leverage Data and Technology. Improve safety by innovative use of data and technology to leverage its impact. Improve timeliness and accuracy of data used for determining safety fitness, and pursuing enforcement actions against unsafe entities of the motor carrier community. A key factor to the success of this component is the information technology/business transformation project COMPASS. More information on COMPASS is available at *http://www.fmcsa.dot.gov.*

Equitable—Fair and Unbiased. Assess and evaluate motor carrier safety and enforce federal laws and safety regulations to ensure consistent treatment of similarly situated members of the motor carrier community.



One conceptual operational model for CSA 2010 shown here would measure safety performance and compliance, determine safety fitness, recommend interventions, apply interventions, and track and evaluate safety improvements for FMCSA regulated entities. The model would continuously evaluate and monitor regulated entities' compliance and safety performance. It would be significantly different from the current model in that the safety fitness determination made under CSA 2010 would be independent of the compliance review. The safety fitness determination would be based on performance data and would lead to a broader array of compliance interventions.

A conceptual model of this nature would be composed of four integrated and independent components: (1) Measurement, (2) Safety Fitness Determination, (3) Intervention Selection, and (4) Tracking, Evaluation and Data Validation. These four components are represented as diamonds in the Operational Model Concept diagram above. Components are the portions of the operational model in which a distinct action would occur. These components would be supported by three data elements that are represented by boxes in the diagram. They are (1) Safety Data, (2) Intervention History, and (3) Entity Characteristics. Components and elements identified to date which could be supportive of the CSA 2010 initiative are described in greater detail below.

Measurement

A Measurement Component could collect, categorize, analyze, and score safety data on regulated entities. It could automatically categorize data into behavioral areas, examples of which are identified below as Behavioral Analysis and Safety Improvement Categories or BASICs. BASICs would represent behaviors that lead to or increase the consequences of crashes. Rather than rely on the results of a compliance review, FMCSA could use motor carrier or driver performance data in the identified behavioral areas to determine safety fitness. The Measurement Component could be supported by the Safety Data Element, which would include data from past interventions, crashes, motor vehicle/driver inspections, and other data sources. The goal of such a system would be to provide an objective, performance-based measure for each motor carrier and driver. The measurement could be regularly updated and made publicly available. Among the BASICs currently under consideration to generate this measure are:

1. *Unsafe Driving*—Dangerous or careless operation of commercial motor vehicles. Data would include driver traffic violations and convictions for speeding, reckless driving, improper lane change, inattention, and other unsafe driving behavior.

2. *Fatigued Driving*—Driving commercial motor vehicles when fatigued. This would be distinguished from incidents where unconsciousness or an inability to react is brought about by the use of alcohol, drugs, or other controlled substances. Data would include (1) hours-of-service violations discovered during a compliance review, focused review, roadside inspection, or post-crash inspection, and (2) crash reports with driver fatigue as a contributing factor.

3. *Driver Fitness*—Operation of commercial motor vehicles (CMVs) by drivers who are unfit to operate a CMV due to lack of training, experience, or medical qualification. Data would include (1) inspection violations for failure to have a valid and appropriate commercial driver's license, or medical or training documentation, (2) crash reports citing a lack of experience or medical reason as a cause or contributory factor, and (3) violations from a compliance review or focused review for failure to maintain proper driver qualification files, or use of unqualified drivers.

4. *Controlled Substances and Alcohol*—Operation of a CMV while impaired due to alcohol, illegal drugs, and misuse of prescription medications or over-the-counter medications. Data would include (1) roadside violations involving controlled substances or alcohol, (2) crash reports citing driver impairment or intoxication as a cause, (3) positive drug or alcohol test results on drivers, and (4) lack of appropriate testing or other deficiencies in motor carrier controlled substances and alcohol testing programs.

5. *Vehicle Maintenance*—CMV failure due to improper or inadequate maintenance. Data would include (1) roadside violations for brakes, lights,

and other mechanical defects, (2) crash reports citing a mechanical failure as a contributing factor, or (3) violations from a compliance review or focused review associated with pre-trip inspections, maintenance records, and repair records.

6. *Improper Loading/Cargo Securement*—Shifting loads, spilled or dropped cargo, and unsafe handling of hazardous materials. Data would include (1) roadside inspection violations pertaining to load securement, cargo retention, and hazardous material handling, and (2) crash reports citing shifting loads, or spilled/dropped cargo as a cause or contributing factor.

7. *Crash/Incident Experience*—Histories or patterns of high crash involvement, including frequency and severity. Data would include law enforcement crash reports and crashes reported by the carrier and discovered during compliance reviews.

The concept of quantifying compliance and safety by numerical scores derived from data is not new to FMCSA. While a Measurement Component would be similar in approach to the agency's current system, SAFESTAT, there are key differences. In the Measurement Component, safety problems would be quantified by a greater number of behavioral areas associated with crash involvement and would use a broader range of available data. The goal is to identify poor performance early and take interventions before small violations become larger safety problems.

Questions

If the CSA 2010 model were to include a Measurement Component with some or all of the features described above:

1. Are the BASICs, referenced above, sufficient for measuring the safety performance of commercial motor carriers and drivers? If not, what other categories of data should be used?

2. Should the BASICs be weighted and scored in determining an objective measure of the safety performance of each commercial motor vehicle driver and carrier, if so, how? Please explain.

3. What is the appropriate historical timeframe to use when measuring the safety performance of CMV drivers and carriers (how far to look back)? Should the timeframe for carriers be different from the timeframe for drivers? Please explain.

4. What data should be used in each of the BASICs to provide an objective measure of the safety performance of CMV drivers and carriers, and from which sources should these data be obtained? Please describe.

5. What methodology should be used to quantify the relationship between crash causation and a given BASIC? Please explain.

6. What other issues should the Agency be considering with respect to the Measurement Component?

7. What do you see as the critical success factors for implementing a measurement system based on data from the BASICs? What are key potential obstacles to implementation?

Safety Fitness Determination

Under 49 U.S.C. 31144, FMCSA is required to ''maintain by regulation a procedure for determining the safety fitness of an owner or operator.'' The CSA 2010 conceptual model could include a Safety Fitness Determination Component to regularly determine the safety fitness of motor carriers and drivers of commercial motor vehicles. This determination could be based on performance-based data from the BASICs described above. This component could also incorporate the regulated entity's history of responses to prior interventions.

The Safety Fitness Determination Component could be used to determine whether a motor carrier, owner, or operator can Continue to Operate or is Unfit. On a regularly scheduled basis, FMCSA could evaluate all safety performance and compliance-based BASIC scores of each regulated entity. Safety fitness could be determined for all carriers and drivers for which there is sufficient data and could be determined on a regular basis as new data enter the operational model. A compliance review would not be required prior to a safety fitness determination. FMCSA anticipates a change of this nature would result in a significant increase in the number of safety fitness determinations issued by the Agency. The safety fitness determinations and the methodology used would be made available to the public, as they are today.

Currently, a safety fitness determination results in a rating of Satisfactory, Conditional, or Unsatisfactory. In the operational model under consideration, only two ratings would be used: Continue to Operate or Unfit. However, carriers, drivers, or owner-operators allowed to continue operations could be subject to a pending, intermediary intervention, as discussed below. Those with the most egregious safety problems could be deemed Unfit immediately and, in that case, would be subject to the prohibitions on operations contained in 49 U.S.C. 31144.

Questions

If the CSA 2010 model were to include a Safety Fitness Determination Component with some or all of the features described above:

1. What other data or behavioral factors, beyond the BASICs referenced above, should be considered in the safety fitness determination process for motor carriers or drivers? What data or behavioral factors should not be considered and why?

2. Should some BASICs be weighted more heavily than others? If so, which ones and why?

3. What is the appropriate timeframe that FMCSA should use in assessing safety fitness (e.g., the past 18 months, 24 months, 36 months)? Please explain.

4. How often (e.g., monthly, quarterly, annually) should FMCSA assess safety fitness and issue safety fitness determinations under the new operational model? Please explain.

5. Should safety fitness determinations be more stringent for certain industry groups such as passenger carriers or carriers of hazardous materials? Why or why not?

6. Should FMCSA adopt a two-tiered rating system (Continue to Operate or Unfit) instead of the current three-tiered rating system (Satisfactory, Conditional, and Unsatisfactory)? Why or why not?

7. What other issues should the Agency be considering with respect to the Safety Fitness Determination Component?

Intervention Selection and Entity Characteristics

The CSA 2010 conceptual model could include an Interventions Component which would identify appropriate FMCSA interventions for regulated entities with specific safety problems, depending on the outcomes of the Safety Fitness Determination and Measurement Components. An intervention, as used in this context, refers to any action FMCSA would take to correct unsafe behavior and achieve compliance. Aside from roadside inspections, the primary compliance intervention currently used is the compliance review. In the approach under consideration, the Agency could have a broader array of interventions, including: (1) Web-based education, (2) warning letters, (3) request for submission of documents, (4) targeted roadside inspections, (5) focused on-site reviews, (6) comprehensive on-site reviews, and (7) enforcement actions.

An Interventions Component of this nature would not necessarily rely on a

compliance review to determine appropriate interventions. Measurement and Safety Fitness Determination Components under consideration could allow a driver or carrier to continue operating, but with some intermediary intervention pending. The Interventions Component would be designed as a tool to support correction of unsafe behavior. Once it has been determined that an intervention is necessary, an intervention could be selected to effectively and efficiently remediate the unsafe behavior. Interventions could be selected according to the BASIC scores from the Measurement and Safety Fitness Determination components, and the Entity Characteristics and Interventions History Data Elements.

A Characteristics Data Element could influence what type of intervention is selected. For example, a motor carrier transporting passengers could be selected for a stronger intervention than a general freight hauler, depending on the circumstances involved and available information.

Responses to prior interventions could be considered in the selection of future interventions through the Interventions History Data Element. Responses to prior interventions could also be considered by the Safety Fitness Determination Component.

Questions

If the CSA 2010 model were to include an Interventions Component with some or all of the features described above:

1. Would the larger set of compliance interventions under consideration here be more effective than the interventions currently used by FMCSA? Please explain.

2. Are there other types of driver and carrier interventions not described above that would improve motor carrier safety? Please describe.

3. Are there specific incentives that FMCSA could offer to encourage and promote improved safety performance? Please describe.

4. Should FMCSA use different interventions and intervention thresholds for certain carriers and drivers, such as those involved in the transport of passengers or hazardous materials? Please explain.

5. Would you support a system whereby FMCSA would declare CMV drivers Unfit, if warranted, and the States would suspend their driver's license (commercial or other)? Please explain.

6. What other issues should the Agency be considering with respect to the Interventions Selection Component?

7. How should responses to FMCSA interventions be factored into the safety fitness determinations?

Safety Data and Tracking, Evaluation and Data Validation

Given the data-dependent nature of the CSA 2010 model under consideration, data validation would be essential. As FMCSA deploys its IT modernization project, COMPASS, as the IT foundation for CSA 2010, robust data validation systems and techniques would be employed to ensure the accuracy and completeness of data. The information systems supporting the CSA 2010 model eventually adopted would examine the quality of incoming data by checking for anomalies. As it does currently, FMCSA would also ensure that regulated entities would have a way to correct data. The Agency's DataQs System already provides an electronic means for filing concerns about the Federal and State data that FMCSA releases to the public. Through this system, data concerns are automatically forwarded to the appropriate office for resolution. The system also allows filers to monitor the status of each filing.

The Tracking, Evaluation and Data Validation Component under consideration could support the three other components identified here: Measurement, Safety Fitness Determination, and Intervention Selection. The information systems supporting CSA 2010 would track regulated entities and would associate them with the relevant data collected by FMCSA. Data pertaining to regulated entities could include characteristics, BASIC scores, safety fitness determinations, interventions, and responses to interventions. FMCSA is working to replace existing paperwork tracking systems with automated data collection systems so that safety fitness determinations are made with the most current data available.

Questions

If the CSA 2010 model were to include a safety data component with some or all of the features described above:

1. What safety data are available that are not currently being used to measure the safety performance of drivers and carriers?

2. Are there safety data not available that are needed for this approach to be equitable? If so, please describe and discuss any potential barriers to collecting such data.

3. How could FMCSA better incorporate data quality assurance processes into CSA 2010?

4. What unique identifiers should be used to tie drivers and carriers to their safety performance data?

5. Are there any major obstacles that must be overcome to achieving accurate and complete data for use in the new operational model? Please explain.

6. What other issues should the Agency be considering with respect to Safety Data and Tracking, Evaluation and Data Validation?

7. Radio frequency identification device (RFID)-enabled license plates could be used to identify commercial motor vehicles at highway speeds. This could help focus inspection and traffic enforcement activities on unsafe or unregistered entities. What barriers would there be to States' issuing RFID enabled license plates?

Other Considerations

FMCSA is targeting full deployment of CSA 2010 by calendar year 2010, subject to budgetary constraints. The following timeline provides the major milestone dates that are planned prior to targeted deployment:

Define operational model technical requirements.	2006 to 2010.
Prototype [1] development and testing.	2006 to 2007.
Pilot test development	2006 to 2007.
Pilot testing	2008.
Evaluate pilot test results	2009.
Develop/define data resources.	2006 to 2009.
Develop data systems and software.	2006 to 2009.
Develop/draft new rulemakings.	2007 to 2009.
Develop/draft needed legislation.	2007 to 2008.
Develop/draft new policies.	2007 to 2009.
Training for pilot testing ..	2006 to 2007.
Training for deployment ..	2008 to 2009.
Outreach & public listening sessions.	Annually.
Deploy	2010.

[1] Prototype refers to testing in a laboratory environment, whereas pilot refers to actual testing with State partners.

Questions

1. What approaches do you recommend FMCSA use to work closely with its partners and stakeholders in building the CSA 2010 operational model? Please explain.

2. Are there certain initiatives which would support the CSA 2010 operational model eventually adopted that could be implemented now? Please explain.

3. Please provide any additional comments or information you may have that would be relevant to the development of the CSA 2010 operational model.

Issued on: October 11, 2006.

John H. Hill,

Administrator.

[FR Doc. 06–8723 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

BNSF Railway Company

Waiver Petition Docket Number FRA–2006–25894

Part 213 of Title 49 at § 213.113(a) states, in part ''* * * when an owner of track learns, through inspection or otherwise, that a rail in track contains any of the defects listed * * *, operation over the defective rail is not permitted until (1) The rail is replaced; or (2) The remedial action prescribed * * * is initiated.'' Based on the forgoing, when a rail flaw detector operator picks an ultrasonic indication for hand test verification, that indication must be considered a defect and remedial action taken until hand test determines it is not a defect. BNSF Railway Company (BNSF) believes post-test processing of detected rail-flaw data has potential to increase rail test productivity and therefore improve safety by increasing frequency of testing.

BNSF is proposing a delayed-verification pilot program to demonstrate feasability and benefits of nonstop rail flaw test with delayed verification. BNSF proposes a delayed-verification pilot program to demonstrate feasibility and benefits of nonstop testing with delayed verification on its Barstow, Aurora, and St. Croix subdivisions. The elements of BNSF's program pilot program are:

- If million gross tons of traffic since last rail test is greater than 10, all indications of possible defects will be verified immediately.
- Indications of possible transverse defects estimated to be greater than 25 percent will be verified immediately.
- Indications of possible longitudinal defects estimated to be greater than 2 inches will be verified immediately.
- Indications of possible bolt hole cracks estimated to be greater than 1 inch in joint bars, and any indications of possible bolt hole cracks not within joint bars, will be verified immediately.
- Indications not requiring immediate verification will be verified within 48 hours.

Since FRA has not yet completed its investigation of BNSF's petition, the agency takes no position at this time on the merits of BNSF's stated justifications.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2006–25894) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, (Volume 65, Number 70; Pages 19477–78). The statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, October 11, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–17165 Filed 10–16–06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Pioneer Valley Railroad (PVRR)

Waiver Petition Docket Number FRA–2000–7094

The Pioneer Valley Railroad (PVRR) has petitioned for a continued waiver of compliance for train employees from the requirements of 49 U.S.C. 21103(a), the Federal hours of service law (HSL). This provision requires the railroad to neither require nor allow train employees to begin or remain on duty in excess of 12 hours in a 24-hour period without receiving the appropriate 8 or 10-hour statutory off-duty period. However, the HSL contains an exemption (49 U.S.C. 21102(b)) permitting a railroad, that employs not more than 15 employees subject to the statute to seek an exemption from the 12-hour limitation. PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if continued, would help its operation if unusual operating conditions are encountered.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 2000–7094) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet

at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on October 11, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–17164 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance orModification of a Railroad Signal System or Relief from the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket Number FRA–2006–25847

Applicants: CSX Transportation, Incorporated, Mr. C. M. King,Chief Engineer, Communications and Signals,500 Water Street, SC J–350,Jacksonville, Florida 32202. Norfolk Southern Corporation, R.J. Rumsey, Assistant Vice President, C&S,99 Spring Street, SW.Atlanta, Georgia 30303.

CSX Transportation, Incorporated (CSXT) and Norfolk Southern Corporation (NS), jointly seek approval of the proposed modification of the signal system, at Stanley Tower Interlocking, milepost CTT–19.50, near Toledo, Ohio, on CSXT's Chicago Division, Toledo Terminal Subdivision. The proposed changes consist of the conversion of power-operated switches, numbers 7 and 8 to hand operation, and the discontinuance and removal of controlled signals, numbers 3, 5, 6, and 11. The proposed changes are associated with a major track and signal rationalization plan at Stanley Tower, and the moving of future control of the facility to the CSXT Operations Center, located in Jacksonville, Florida.

The reason given for the proposed changes is that under the proposed rationalization plan, the power-operated switches will not be required. Trains approaching from the north will operate at a slow speed through Stanley Interlocking.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the addresses listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on October 11, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety,Standards and Program Development.

[FR Doc. E6–17166 Filed 10–16–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 665]

Rail Transportation of Grain

AGENCY: Surface Transportation Board.

ACTION: Notice of public hearing.

SUMMARY: The Surface Transportation Board will hold a public hearing beginning at 10 a.m. on Thursday, November 2, 2006, at its offices in Washington, DC. The purpose of the public hearing will be to examine issues related to the transportation of grain by rail. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Thursday November 2, 2006. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, the time requested, and the topic(s) to be covered, as soon as possible but no later than October 23, 2006. Each speaker should also file with the Board his/her written testimony by October 30, 2006. Written submissions by interested persons who do not wish to appear at the hearing will also be due by October 30, 2006.

ADDRESSES: All notices of intent to participate and testimony may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should comply with the Board's *www.stb.dot.gov* Web site, at the ''E-Filing'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, *Attn:* STB Ex Parte No. 665, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION, CONTACT: Joseph H. Dettmar, (202) 565–1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: On October 6, 2006, the United States Government Accountability Office (GAO) released a report that included observations on rates, competition, and capacity issues in the American rail freight industry. GAO reported that the changes that have occurred in the rail industry since the Staggers Rail Act of 1980 are widely viewed as positive. The financial health of the industry has improved substantially as railroads have cut costs and boosted productivity. GAO

found that most rates have declined since 1985. However, one category of rates examined by GAO—grain rates—diverged from the industry trends. According to the GAO report, the amount of grain traffic with comparatively high markups over variable cost increased notably between 1985 and 2004.

The Board will hold a public hearing, as a forum for interested persons to provide views and information about the market conditions that led to these observations by GAO and about grain transportation markets in general. Because U.S. grain producers compete in a broader North American, and global, marketplace, the Board also invites information regarding the interplay between the American and Canadian wheat markets, how the Canadian regulatory system differs from the American system, and what impact those differences might have on grain production in the United States.

Date of Hearing. The hearing will begin at 10 a.m. on Thursday, November 2, 2006, in the 7th floor hearing room at the Board's headquarters in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate. Any person wishing to speak at the hearing should file with the Board a written notice of intent to participate, and should identify the party, the proposed speaker, the time requested, and topic(s) to be covered, as soon as possible, but no later than October 23, 2006.

Testimony. Each speaker should file with the Board his/her written testimony by October 30, 2006. Also, any interested person who wishes to submit a written statement without appearing at the November 2 hearing should file that statement by October 30, 2006.

Board Releases and Live Audio Available Via the Internet. Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live audio streaming. To access the hearing, click on the ''Live Audio'' link under ''Information Center'' at the left side of the home page beginning at 10 a.m. on November 2, 2006.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: October 11, 2006.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. E6–17151 Filed 10–16–06; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34927]

Coast Belle Rail Corp. d/b/a Santa Maria Valley Railroad—Lease and Operation Exemption—Line of Coast Belle Rail, LLC

Coast Belle Rail Corp. d/b/a Santa Maria Valley Railroad (CBRC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to operate approximately 8.74 miles of rail line owned by Coast Belle Rail, LLC. The line extends between milepost 3.26 near Guadalupe, CA, and milepost 9.0 at Santa Maria, CA, and includes the Airbase branch between milepost 9A at Santa Maria and milepost 12A. In the notice, CBRC also seeks to lease by assignment and operate 4.26 miles of rail line between milepost 0.0 and milepost 3.26, including the branch between milepost 3A at Betteravia Junction southeast and milepost 4A in Betteravia, CA, all located in Santa Barbara County, CA. The lease of this line of railroad, owned by the Union Pacific Railroad Company and presently leased to Santa Maria Valley Railroad Company, is being assigned to CBRC. CBRC will operate a total of 13.0 miles of rail line.

CBRC certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

The transaction was scheduled to be consummated on or soon after September 26, 2006, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34923, *Coast Belle Rail, LLC—Acquisition Exemption—Santa Maria Valley Railroad Company.* In that proceeding, Coast Belle Rail, LLC seeks to acquire the 8.74 miles of rail line in Santa Barbara County, CA, that CBRC seeks to operate.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34927, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 6, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–17144 Filed 10–13–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34923]

Coast Belle Rail, LLC—Acquisition Exemption—Santa Maria Valley Railroad Company

Coast Belle Rail, LLC (CBRL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from the Santa Maria Valley Railroad Company (SMVRR) approximately 8.74 miles of rail line between milepost 3.26 near Guadalupe, CA, and milepost 9.0 at Santa Maria, CA, including the Airbase branch between milepost 9A at Santa Maria and milepost 12A, all located in Santa Barbara County, CA.

CBRL certifies that its projected annual revenues as a result of the transaction will not exceed those that would qualify it as a Class III rail carrier.

The transaction was expected to be consummated on or soon after September 26, 2006, the effective date of this exemption (7 days after the exemption was filed).

This transaction is related to a concurrently filed verified notice of exemption in STB Finance Docket No. 34927, *Coast Belle Rail Corp. d/b/a Santa Maria Valley Railroad—Lease and Operation Exemption—Line of Coast Belle Rail, LLC.* In that proceeding, Coast Belle Rail Corp. d/b/a Santa Maria Valley Railroad (CBRC) seeks to (1) operate the 8.74-mile line of railroad being acquired by CBRL, and (2) lease and operate an adjoining 4.26 miles of rail line owned by Union

Pacific Railroad Company. The 4.26-mile line of railroad is presently leased to Santa Maria Valley Railroad Company and will be assigned to CBRC. CBRC will operate a total of 13.0 miles of rail line, all located in Santa Barbara County, CA.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34923, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 6, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–17141 Filed 10–16–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 11, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 16, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0938.

Type of Review: Extension.

Title: Interest Charge Domestic International Sales Corporation Return.

Forms: 1120 IC–DISC.

Description: U.S. Corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120 IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders; Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealing with related suppliers, etc.

Respondents: Businesses and for-profit institutions.

Estimated Total Burden Hours: 229,676 hours.

OMB Number: 1545–2018.

Type of Review: Extension.

Title: Revenue Procedure 2006–XX, Revocation of Election filed under I.R.C. 83(b).

Description: This revenue procedure sets forth the procedures to be followed by individuals who wish to request permission to revoke the election they made under section 83(b).

Respondents: Individuals or Households.

Estimated Total Burden Hours: 400 hours.

OMB Number: 1545–2015.

Type of Review: Extension.

Title: Tax Exempt Hospitals Compliance Check Questionnaire.

Description: A form to solicit information pertaining to the operations of tax exempt hospitals. Respondents will include hospitals claiming exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

Respondents: Not-for-profit institutions.

Estimated Total Burden Hours: 6,540 hours.

OMB Number: 1545–0115.

Type of Review: Extension.

Title: Miscellaneous Income.

Form: 1099–MISC.

Description: Form 1099–MISC is used by payers to report payments of $600 or more of rents, prizes and awards, medical and health care payments, non-employee compensation, and crop insurance proceeds, $10 or more of royalties, any amount of fishing boat proceeds, certain substitute payments, golden parachute payments, and an indication of direct sales of $5,000 or more.

Respondents: Business or other for profit institutions.

Estimated Total Burden Hours: 1,513 hours.

Clearance Officer: Glenn P. Kirkland, (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E6–17163 Filed 10–16–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of the Assistant Secretary for International Affairs; Survey of U.S. Ownership of Foreign Securities as of December 31, 2006

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of reporting requirements.

SUMMARY: By this notice, the Department of the Treasury is informing the public that it is conducting a mandatory survey of ownership of foreign securities by U.S. residents as of December 31, 2006. This notice constitutes legal notification to all United States persons (defined below) who meet the reporting requirements set forth in this notice that they must respond to this survey. United States persons who meet the reporting requirements but who do not receive a set of the survey forms and instructions should contact the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, at (212) 720–6300 to obtain a copy. Additional copies of the reporting form SHC (end-Dec. 2006) and instructions may be printed from the Internet at: *http://www.treas.gov/tic/forms-sh.html.*

Definition: A U.S. person is any individual, branch, partnership, associated group, association, estate, trust, corporation, or other organization (whether or not organized under the laws of any State), and any government (including a foreign government, the United States Government, a State, provincial, or local government, and any agency, corporation, financial institution, or other entity or instrumentality thereof, including a government-sponsored agency), who resides in the United States or is subject to the jurisdiction of the United States.

Who Must Report: The following U.S. persons must report on this survey:

- U.S. persons who manage, as custodians, the safekeeping of foreign securities for U.S. persons. These U.S. persons, who include the affiliates in the United States of foreign entities,

must report on this survey if the total market value of the foreign securities whose safekeeping they manage on behalf of U.S. persons—aggregated over all accounts and for all branches and affiliates of their firm—is $100 million or more as of the close of business on December 31, 2006.

• U.S. persons who own foreign securities. These U.S. persons, who include the affiliates in the United States of foreign entities, must report on this survey if the total market value of these foreign securities—aggregated over all accounts and for all branches and affiliates of their firm—is $100 million or more as of the close of business on December 31, 2006.

What to Report: This report will collect information on U.S. resident holdings of foreign securities, i.e. equities, long-term debt securities, and short-term debt securities (including selected money market instruments).

How to Report: Copies of the survey forms and instructions, which contain complete information on reporting procedures, may be obtained at the Web site address given above in the **SUMMARY**, or by contacting the survey staff of the Federal Reserve Bank of New York at (212) 720–6300, e-mail: *SHC.help@ny.frb.org.* The mailing address is: Federal Reserve Bank of New York, Statistics Function, 4th Floor, 33 Liberty Street, New York, NY 10045–0001.

When to Report: Data must be submitted to the Federal Reserve Bank of New York, acting as fiscal agent for the Department of the Treasury, by March 2, 2007.

Paperwork Reduction Act Notice: This data collection has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act and assigned control number 1505–0146. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. The estimated average annual burden associated with this collection of information is 16 hours per respondent for exempt reporters, 40 hours per respondent reporting U.S resident custodian information on Schedule 3, 120 hours per U.S resident investor providing detailed information on Schedule 2, and 360 hours per U.S. resident custodian reporting detailed information on Schedule 2. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Department of the Treasury, Attention Administrator, International Portfolio Investment Data Reporting Systems, Room 5422 MT, Washington, DC 20220, and to OMB, Attention Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Dated: October 11, 2006.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Reporting Systems.

[FR Doc. E6–17159 Filed 10–16–06; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–05: OTS Nos. 17873, H4059, H4060, and H4317]

Citizens Community Federal, Citizens Community MHC, Citizens Community Bancorp, and Citizens Community Bancorp, Inc., Eau Claire, WI; Approval of Conversion Application

Notice is hereby given that on September 11, 2006, the Assistant Managing Director, Examinations and Supervision—Operations, Office of Thrift Supervision (OTS), or her designee, acting pursuant to delegated authority, approved the application of Citizens Community MHC and Citizens Community Federal, Eau Claire, Wisconsin, to convert to the stock form of organization. Copies of the application are available for inspection by appointment (phone number: 202–906–5922 or e-mail. *Public.Info@OTS.Treas.gov*) at the Public Reading Room, 1700 G Street, NW., Washington, DC 20552, and the OTS Midwest Regional Office, 225 East John Carpenter Freeway, Suite 500, Irving, TX 75062–2326.

Dated: October 11, 2006.

By the Office of Thrift Supervision.

Sandra E. Evans,

Legal Information Assistant.

[FR Doc. 06–8710 Filed 10–16–06; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board; Notice of Meetings

The Department of Veterans Affairs gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that the subcommittees of the Joint Biomedical Laboratory Research and Development and Clinical Science Research and Development Services Scientific Merit Review Board will meet from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date(s)	Location
Nephrology	November 6, 2006	Beacon Hotel.
Surgery	November 13, 2006	Embassy Suites Hotel.
Endocrinology-A	November 13–14, 2006	Churchill Hotel.
Cellular & Molecular Medicine	November 15, 2006	*VA Central Office.
Hematology	November 16, 2006	*VA Central Office.
Immunology-A	November 16, 2006	Holiday Inn Central.
Endocrinology-B	November 17, 2006	Hotel Helix.
Neurobiology-D	November 17, 2006	One Washington Circle.
Cardiovascular Studies-A	November 20, 2006	Embassy Suites Hotel.
Mental Hlth & Behav Sciences-A	November 27, 2006	DoubleTree Hotel.
Infectious Diseases-B	November 29, 2006	DoubleTree Hotel.
Cardiovascular Studies-B	November 30, 2006	*VA Central Office.
Gastroenterology	November 30, 2006	Hotel Rouge.
Infectious Diseases-A	December 1, 2006	*VA Central Office.
Neurobiology-A	December 4, 2006	One Washington Circle.
Oncology-A	December 4–5, 2006	Churchill Hotel.
Respiration	December 6, 2006	Beacon Hotel.
Immunology-B	December 7, 2006	Churchill Hotel.
Epidemiology	December 8, 2006	*VA Central Office.

Subcommittee for	Date(s)	Location
Neurobiology-E	December 11, 2006	*VA Central Office.
Oncology-B	December 11–12, 2006	St. Gregory Hotel.
Mental Hlth & Behav Sciences-B	December 13, 2006	DoubleTree Hotel.
Neurobiology-C	December 14–15, 2006	DoubleTree Hotel.

* Teleconference.

The addresses of the hotels and VA Central Office are:

Beacon Hotel & Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC; DoubleTree Hotel, 1515 Rhode Island Avenue, NW., Washington, DC; Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC; Holiday Inn Central, 1501 Rhode Island Avenue, NW., Washington, DC; Hotel Helix, 1430 Rhode Island Avenue, NW., Washington, DC; Hotel Rouge, 1315–16th Street, NW., Washington, DC; One Washington Circle Hotel, One Washington Circle, NW., Washington, DC; St. Gregory Hotel, 2033 M Street, NW., Washington, DC; The Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC; VA Central Office, 1722 Eye Street, NW., Washington, DC.

The purpose of the Merit Review Board is to provide advice on the scientific quality, budget, safety and mission relevance of investigator-initiated research proposals submitted for VA merit review consideration. Proposals submitted for review by the Board involve a wide range of medical specialties within the general areas of biomedical, behavioral and clinic science research.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of each meeting involves discussion, examination, reference to staff and consultant critiques of research protocols. During this portion of each subcommittee meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Public Law 92–463, as amended, closing portions of these subcommittee meetings is in accordance with 5 U.S.C., 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact LeRoy G. Frey, PhD., Chief, Program Review (121F), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 at (202) 254–0288.

Dated: October 11, 2006.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 06–8729 Filed 10–16–06; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
October 17, 2006

Part II

Environmental Protection Agency

40 CFR Part 50

National Ambient Air Quality Standards for Particulate Matter; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2001–0017; FRL–8225–3]

RIN 2060–AI44

National Ambient Air Quality Standards for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Based on its review of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM), EPA is making revisions to the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively. With regard to primary standards for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$), EPA is revising the level of the 24-hour $PM_{2.5}$ standard to 35 micrograms per cubic meter (μg/m³) and retaining the level of the annual $PM_{2.5}$ standard at 15μg/m³. With regard to primary standards for particles generally less than or equal to 10μm in diameter (PM_{10}), EPA is retaining the 24-hour PM_{10} and revoking the annual PM_{10} standard. With regard to secondary PM standards, EPA is making them identical in all respects to the primary PM standards, as revised.

DATES: This final rule is effective on December 18, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2001–0017. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 202–566–1741. The telephone number for the Public Reading Room is 202–566–1744.

The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Ms. Beth M. Hassett-Sipple, Mail Code C504–06, Health and Environmental Impacts Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: (919) 541–4605, e-mail: *hassett-sipple.beth@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

The following topics are discussed in today's preamble:

I. Background
A. Summary of Revisions to the PM NAAQS
B. Legislative Requirements
C. Overview of Air Quality Criteria and Standards Review for PM
D. Related Control Programs to Implement PM Standards
E. Summary of Proposed Revisions to the PM NAAQS
F. Organization and Approach to Final PM NAAQS Decisions
II. Rationale for Final Decisions on Primary $PM_{2.5}$ Standards
A. Introduction
1. Overview
2. Overview of Health Effects Evidence
3. Overview of Quantitative Risk Assessment
B. Need for Revision of the Current Primary $PM_{2.5}$ Standards
1. Introduction
2. Comments on the Need for Revision
3. Conclusions Regarding the Need for Revision
C. Indicator for Fine Particles
D. Averaging Time of Primary $PM_{2.5}$ Standards
E. Form of Primary $PM_{2.5}$ Standards
1. 24-Hour $PM_{2.5}$ Standard
2. Annual $PM_{2.5}$ Standard
F. Level of Primary $PM_{2.5}$ Standards
1. 24-Hour $PM_{2.5}$ Standard
2. Annual $PM_{2.5}$ Standard
G. Final Decisions on Primary $PM_{2.5}$ Standards
III. Rationale for Final Decisions on Primary PM_{10} Standards
A. Introduction
1. Overview
2. Overview of Health Effects Evidence
3. Overview of Quantitative Risk Assessment
B. Need for Revision of the Current Primary PM_{10} Standards
1. Overview of the Proposal
2. Comments on the Need for Revision
C. Indicator for Thoracic Coarse Particles
1. Introduction
2. Comments on Indicator for Thoracic Coarse Particles
3. Decision Not to Revise PM_{10} Indicator
a. Unqualified $PM_{10-2.5}$ Indicator
b. PM_{10} Indicator
c. Unqualified PM_{10} Indicator, with Adjustment to the $PM_{2.5}$ Component
4. Conclusions Regarding Indicator for Thoracic Coarse Particles
D. Conclusions Regarding Averaging Time, Form, and Level of the Current PM_{10} Standards
1. Averaging Time
2. Level and Form of the 24-Hour PM_{10} Standard
E. Final Decisions on Primary PM_{10} Standards
IV. Rationale for Final Decisions on Secondary PM Standards
A. Visibility Impairment
1. Visibility Impairment Related to Ambient PM
2. Need for Revision of the Current Secondary $PM_{2.5}$ Standards to Protect Visibility
3. Indicator of PM for Secondary Standard to Address Visibility Impairment
4. Averaging Time of a Secondary $PM_{2.5}$ Standard for Visibility Protection
5. Final Decisions on Secondary $PM_{2.5}$ Standards for Visibility Protection
B. Other PM-Related Welfare Effects
1. Evidence of Non-Visibility Welfare Effects Related to PM
2. Need for Revision of the Current Secondary PM Standards to Address Other PM-Related Welfare Effects
C. Final Decisions on Secondary PM Standards
V. Interpretation of the NAAQS for PM
A. Amendments to Appendix N—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$
1. General
2. $PM_{2.5}$ Monitoring and Data Reporting Considerations
3. $PM_{2.5}$ Computations and Data Handling Conventions
4. Conforming Revisions
B. Proposed Appendix P—Interpretation of the National Ambient Air Quality Standards for $PM_{10-2.5}$
C. Amendments to Appendix K—Interpretation of the National Ambient Air Quality Standards for PM_{10}
VI. Reference Methods for the Determination of Particulate Matter as $PM_{10-2.5}$ and $PM_{2.5}$
A. Appendix O to Part 50—Reference Method for the Determination of Coarse Particulate Matter as $PM_{10-2.5}$ in the Atmosphere
B. Amendments to Appendix L—Reference Method for the Determination of Fine Particulate Matter (as $PM_{2.5}$) in the Atmosphere
VII. Issues Related to Implementation of PM_{10} Standards
A. Summary of Comments Received on Transition

B. Impact of Decision on PM_{10} Designations
C. Impact of Decision on State Implementation Plans (SIPs) and Control Obligations
D. Consideration of Fugitive Emissions for New Source Review (NSR) Purposes
E. Handling of PM_{10} Exceedances Due to Exceptional Events
VIII. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
G. Executive Order 13045: Protection of Children from Environmental Health & Safety Risks
H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
References

I. Background

A. Summary of Revisions to the PM NAAQS

Based on its review of the air quality criteria and national ambient air quality standards (NAAQS) for particulate matter (PM), EPA is making revisions to the primary and secondary NAAQS for PM to provide increased protection of public health and welfare, respectively.

With regard to primary standards for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$), EPA is revising the level of the 24-hour $PM_{2.5}$ standard to 35 micrograms per cubic meter μg/m^3), providing increased protection against health effects associated with short-term exposure (including premature mortality and increased hospital admissions and emergency room visits), and retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m^3, continuing protection against health effects associated with long-term exposure (including premature mortality and development of chronic respiratory disease). The EPA is revising the form of the annual $PM_{2.5}$ standard with regard to the criteria for spatial averaging, such that averaging across monitoring sites is allowed if the annual mean concentration at each monitoring site is within 10 percent of the spatially averaged annual mean, and the daily values for each monitoring site pair yield a correlation coefficient of at least 0.9 for each calendar quarter.

With regard to primary standards for particles generally less than or equal to 10μm in diameter (PM_{10}), EPA is retaining the 24-hour PM_{10} standard to protect against the health effects associated with short-term exposure to coarse particles (including hospital admissions for cardiopulmonary diseases, increased respiratory symptoms and possibly premature mortality). Given that the available evidence does not suggest an association between long-term exposure to coarse particles at current ambient levels and health effects, EPA is revoking the annual PM_{10} standard.

With regard to secondary PM standards, EPA is revising the current 24-hour $PM_{2.5}$ secondary standard by making it identical to the revised 24-hour $PM_{2.5}$ primary standard, retaining the annual $PM_{2.5}$ and 24-hour PM_{10} secondary standards, and revoking the annual PM_{10} secondary standard. This suite of secondary PM standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and materials damage and soiling.

B. Legislative Requirements

Two sections of the Clean Air Act (CAA) govern the establishment and revision of the NAAQS. Section 108 (42 U.S.C. 7408) directs the Administrator to identify and list ''air pollutants'' that ''in his judgment, may reasonably be anticipated to endanger public health and welfare'' and whose ''presence * * * in the ambient air results from numerous or diverse mobile or stationary sources'' and to issue air quality criteria for those that are listed. Air quality criteria are intended to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in ambient air * * *.''

Section 109 (42 U.S.C. 7409) directs the Administrator to propose and promulgate ''primary'' and ''secondary'' NAAQS for pollutants listed under section 108. Section 109(b)(1) defines a primary standard as one ''the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health.'' [1] A secondary standard, as defined in section 109(b)(2), must ''specify a level of air quality the attainment and maintenance of which, in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of [the] pollutant in the ambient air.'' [2]

The requirement that primary standards include an adequate margin of safety was intended to address uncertainties associated with inconclusive scientific and technical information available at the time of standard setting. It was also intended to provide a reasonable degree of protection against hazards that research has not yet identified. *Lead Industries Association* v. *EPA,* 647 F.2d 1130, 1154 (D.C. Cir 1980), *cert. denied*, 449 U.S. 1042 (1980); *American Petroleum Institute* v. *Costle,* 665 F.2d 1176, 1186 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 1034 (1982). Both kinds of uncertainties are components of the risk associated with pollution at levels below those at which human health effects can be said to occur with reasonable scientific certainty. Thus, in selecting primary standards that include an adequate margin of safety, the Administrator is seeking not only to prevent pollution levels that have been demonstrated to be harmful but also to prevent lower pollutant levels that may pose an unacceptable risk of harm, even if the risk is not precisely identified as to nature or degree. The CAA does not require the Administrator to establish a primary NAAQS at a zero-risk level or at a background concentration level (see *Lead Industries Association* v. *EPA, supra,* 647 F.2d at 1156 n. 51), but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

In addressing the requirement for an adequate margin of safety, EPA considers such factors as the nature and severity of the health effects involved, the size of the sensitive population(s) at risk, and the kind and degree of the uncertainties that must be addressed. The selection of any particular approach to providing an adequate margin of safety is a policy choice left specifically to the Administrator's judgment. *Lead*

[1] The legislative history of section 109 indicates that a primary standard is to be set at ''the maximum permissible ambient air level * * * which will protect the health of any [sensitive] group of the population,'' and that for this purpose ''reference should be made to a representative sample of persons comprising the sensitive group rather than to a single person in such a group'' [S. Rep. No. 91–1196, 91st Cong., 2d Sess. 10 (1970)].

[2] Welfare effects as defined in section 302(h) [42 U.S.C. 7602(h)] include, but are not limited to, ''effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.''

Industries Association v. *EPA, supra,* 647 F.2d at 1161–62.

In setting standards that are ''requisite'' to protect public health and welfare, as provided in section 109(b), EPA's task is to establish standards that are neither more nor less stringent than necessary for these purposes. In establishing primary and secondary standards, EPA may not consider the costs of implementing the standards. See generally *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 465–472, 475–76 (2001).

Section 109(d)(1) of the CAA requires that ''not later than December 31, 1980, and at 5-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards * * * and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with [the provisions in section 109(b) on primary and secondary standards].'' This includes the authority to modify or revoke a standard or standards, as appropriate under these provisions. Section 109(d)(2) requires that an independent scientific review committee ''shall complete a review of the criteria * * * and the national primary and secondary ambient air quality standards * * * and shall recommend to the Administrator any new * * * standards and revisions of existing criteria and standards as may be appropriate * * *.'' This independent review function is performed by the Clean Air Scientific Advisory Committee (CASAC) of EPA's Science Advisory Board.

C. Overview of Air Quality Criteria and Standards Review for PM

Particulate matter is the generic term for a broad class of chemically and physically diverse substances that exist as discrete particles (liquid droplets or solids) over a wide range of sizes. Particles originate from a variety of anthropogenic stationary and mobile sources as well as from natural sources. Particles may be emitted directly or formed in the atmosphere by transformations of gaseous emissions such as sulfur oxides (SO_X), nitrogen oxides (NO_X), and volatile organic compounds (VOC). The chemical and physical properties of PM vary greatly with time, region, meteorology, and source category, thus complicating the assessment of health and welfare effects.

More specifically, the PM that is the subject of the air quality criteria and standards reviews includes both fine particles and thoracic coarse particles, which are considered as separate subclasses of PM pollution based in part on long-established information on differences in sources, properties, and atmospheric behavior between fine and coarse particles (EPA, 2005, section 2.2). Fine particles are produced chiefly by combustion processes and by atmospheric reactions of various gaseous pollutants, whereas thoracic coarse particles are generally emitted directly as particles as a result of mechanical processes that crush or grind larger particles or the resuspension of dusts. Sources of fine particles include, for example, motor vehicles, power generation, combustion sources at industrial facilities, and residential fuel burning. Sources of thoracic coarse particles include, for example, traffic-related emissions such as tire and brake lining materials, direct emissions from industrial operations, construction and demolition activities, and agricultural and mining operations. Fine particles can remain suspended in the atmosphere for days to weeks and can be transported thousands of kilometers, whereas thoracic coarse particles generally deposit rapidly on the ground or other surfaces and are not readily transported across urban or broader areas.

The last review of PM air quality criteria and standards was completed in July 1997 with notice of a final decision to revise the existing standards (62 FR 38652, July 18, 1997). In that decision, EPA revised the PM NAAQS in several respects. While EPA determined that the PM NAAQS should continue to focus on particles less than or equal to 10 μm in diameter (PM_{10}), EPA also determined that the fine and coarse fractions of PM_{10} should be considered separately. The EPA added new standards, using $PM_{2.5}$ as the indicator for fine particles (with $PM_{2.5}$ referring to particles with a nominal aerodynamic diameter less than or equal to 2.5 μm), and using PM_{10} as the indicator for purposes of regulating the coarse fraction of PM_{10} (referred to as thoracic coarse particles or coarse-fraction particles; generally including particles with a nominal aerodynamic diameter greater than 2.5 μm and less than or equal to 10 μm, or $PM_{10-2.5}$). The EPA established two new $PM_{2.5}$ standards: An annual standard of 15 μg/m^3, based on the 3-year average of annual arithmetic mean $PM_{2.5}$ concentrations from single or multiple community-oriented monitors; and a 24-hour standard of 65 μg/m^3, based on the 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area. Also, EPA established a new reference method for the measurement of $PM_{2.5}$ in the ambient air and adopted rules for determining attainment of the new standards. To continue to address thoracic coarse particles, EPA retained the annual PM_{10} standard, while revising the form, but not the level, of the 24-hour PM_{10} standard to be based on the 99th percentile of 24-hour PM_{10} concentrations at each monitor in an area. The EPA revised the secondary standards by making them identical in all respects to the primary standards.

Following promulgation of the revised PM NAAQS, petitions for review were filed by a large number of parties, addressing a broad range of issues. In May 1999, a three-judge panel of the U.S. Court of Appeals for the District of Columbia Circuit issued an initial decision that upheld EPA's decision to establish fine particle standards, holding that ''the growing empirical evidence demonstrating a relationship between fine particle pollution and adverse health effects amply justifies establishment of new fine particle standards.'' *American Trucking Associations* v. *EPA,* 175 F.3d 1027, 1055–56 (D.C. Cir. 1999) (''ATA I'') rehearing granted in part and denied in part, 195 F.3d 4 (D.C. Cir. 1999) (''ATA II''), affirmed in part and reversed in part, *Whitman* v. *American Trucking Associations,* 531 U.S. 457 (2001). The Panel also found ''ample support'' for EPA's decision to regulate coarse particle pollution, but vacated the 1997 PM_{10} standards, concluding that EPA's justification for the use of PM_{10} as an indicator for coarse particles was arbitrary. 175 F.3d at 1054–55. Pursuant to the court's decision, EPA removed the vacated 1997 PM_{10} standards from the regulations (CFR) (69 FR 45592, July 30, 2004) and deleted the regulatory provision (at 40 CFR 50.6(d)) that controlled the transition from the pre-existing 1987 PM_{10} standards to the 1997 PM_{10} standards (65 FR 80776, December 22, 2000). The pre-existing 1987 PM_{10} standards remained in place. *Id.* at 80777.

More generally, the panel held (over one judge's dissent) that EPA's approach to establishing the level of the standards in 1997, both for PM and for ozone NAAQS promulgated on the same day, effected ''an unconstitutional delegation of legislative authority.'' *Id.* at 1034–40. Although the panel stated that ''the factors EPA uses in determining the degree of public health concern associated with different levels of ozone and PM are reasonable,'' it remanded the rule to EPA, stating that when EPA considers these factors for potential non-threshold pollutants ''what EPA lacks is any determinate criterion for

drawing lines'' to determine where the standards should be set. Consistent with EPA's long-standing interpretation and D.C. Circuit precedent, the panel also reaffirmed prior rulings holding that in setting NAAQS EPA is ''not permitted to consider the cost of implementing those standards.'' *Id.* at 1040–41.

Both sides filed cross appeals on these issues to the United States Supreme Court, and the Court granted *certiorari.* In February 2001, the Supreme Court issued a unanimous decision upholding EPA's position on both the constitutional and cost issues. *Whitman* v. *American Trucking Associations,* 531 U.S. 457, 464, 475–76 (2001). On the constitutional issue, the Court held that the statutory requirement that NAAQS be ''requisite'' to protect public health with an adequate margin of safety sufficiently guided EPA's discretion, affirming EPA's approach of setting standards that are neither more nor less stringent than necessary. The Supreme Court remanded the case to the Court of Appeals for resolution of any remaining issues that had not been addressed in that court's earlier rulings. *Id.* at 475–76. In March 2002, the Court of Appeals rejected all remaining challenges to the standards, holding under the traditional standard of judicial review that EPA's $PM_{2.5}$ standards were reasonably supported by the administrative record and were not ''arbitrary and capricious.'' *American Trucking Associations* v. *EPA,* 283 F. 3d 355, 369–72 (D.C. Cir. 2002) (''*ATA III*'').

In October 1997, EPA published its plans for the current periodic review of the PM criteria and NAAQS (62 FR 55201, October 23, 1997), including the 1997 $PM_{2.5}$ standards and the 1987 PM_{10} standards. The approach in this review continues to address fine and thoracic coarse particles separately. This approach has been reinforced by new information that has advanced our understanding of differences in human exposure relationships and dosimetric patterns characteristic of these two subclasses of PM pollution, as well as the apparent independence of health effects that have been associated with them in epidemiologic studies (EPA, 2004a, section 3.2.3). See also *ATA I,* 175 F. 3d at 1053–54, 1055–56 (EPA justified in establishing separate standards for fine and thoracic coarse particles).

As part of the process of preparing an updated Air Quality Criteria Document for Particulate Matter (henceforth, the ''Criteria Document''), EPA's National Center for Environmental Assessment (NCEA) hosted a peer review workshop in April 1999 on drafts of key Criteria Document chapters. The first external review draft Criteria Document was reviewed by CASAC and the public at a meeting held in December 1999. Based on CASAC and public comment, NCEA revised the draft Criteria Document and released a second draft in March 2001 for review by CASAC and the public at a meeting held in July 2001. A preliminary draft of a staff paper, Review of the National Ambient Air Quality Standards for Particulate Matter: Assessment of Scientific and Technical Information (henceforth, the ''Staff Paper'') prepared by EPA's Office of Air Quality Planning and Standards (OAQPS) was released in June 2001 for public comment and for consultation with CASAC at the same public meeting. Taking into account CASAC and public comments, a third draft Criteria Document was released in May 2002 for review at a meeting held in July 2002.

Shortly after the release of the third draft Criteria Document, the Health Effects Institute (HEI) [3] announced that researchers at Johns Hopkins University had discovered problems with applications of statistical software used in a number of important epidemiological studies that had been discussed in that draft Criteria Document. In response to this significant issue, EPA took steps in consultation with CASAC and the broader scientific community to encourage researchers to reanalyze affected studies and to submit them expeditiously for peer review by a special expert panel convened at EPA's request by HEI. The results of this reanalysis and peer-review process were subsequently incorporated into a fourth draft Criteria Document, which was released in June 2003 and reviewed by CASAC and the public at a meeting held in August 2003.

The first draft Staff Paper, based on the fourth draft Criteria Document, was released at the end of August 2003, and was reviewed by CASAC and the public at a meeting held in November 2003. During that meeting, EPA also consulted with CASAC on a new framework for the final chapter (integrative synthesis) of the Criteria Document and on ongoing revisions to other Criteria Document chapters to address previous CASAC comments. The EPA held additional consultations with CASAC at public meetings held in February, July, and September 2004, leading to publication of the final Criteria Document in October 2004 (EPA, 2004a). The second draft Staff Paper, based on the final Criteria Document, was released at the end of January 2005, and was reviewed by CASAC and the public at a meeting held in April 2005. The CASAC's advice and recommendations to the Administrator, based on its review of the second draft Staff Paper, were further discussed during a public teleconference held in May 2005 and are provided in a June 6, 2005 letter to the Administrator (Henderson, 2005a). The final Staff Paper takes into account the advice and recommendations of CASAC and public comments received on the earlier drafts of this document. The Administrator subsequently received additional advice and recommendations from the CASAC, specifically on potential standards for thoracic coarse particles, in a teleconference on August 11, 2005, and in a letter to the Administrator dated September 15, 2005 (Henderson, 2005b). The final Staff Paper was reissued in December 2005 to add CASAC's final letter as an attachment (EPA, 2005).

The schedule for completion of this review is governed by a consent decree resolving a lawsuit filed in March 2003 by a group of plaintiffs representing national environmental organizations. The lawsuit alleged that EPA had failed to perform its mandatory duty, under section 109(d)(1), of completing the current review within the period provided by statute. *American Lung Association* v. *Whitman* (No. 1:03CV00778, D.D.C. 2003). An initial consent decree was entered by the court in July 2003 after an opportunity for public comment. The consent decree, as modified by the court, provides that EPA will sign for publication notices of proposed and final rulemaking concerning its review of the PM NAAQS no later than December 20, 2005 and September 27, 2006, respectively.

On December 20, 2005, EPA issued its proposed decision to revise the NAAQS for PM (71 FR 2620, January 17, 2006) (henceforth ''proposal''). In the proposal, EPA identified proposed revisions to the standards, based on the air quality criteria for PM, and to related data handling conventions and federal reference methods for monitoring PM. The proposal solicited public comments on alternative primary and secondary standards and related matters.

The EPA held several public hearings across the country to provide direct opportunities for public comment on the proposed revisions to the PM NAAQS. On March 8, 2006, EPA held three concurrent 12-hour public hearings in Philadelphia, PA; Chicago, IL; and San Francisco, CA. At these public hearings, EPA heard testimony

[3] The HEI is a non-profit, independent research institute jointly and equally funded by EPA and multiple industries that conducts research on the health effects of air pollution.

from 280 individuals representing themselves or specific interested organizations.

More than 120,000 comments were received from members of the public and various interested groups on the proposed revisions to the PM NAAQS by the close of the public comment period on April 17, 2006. CASAC provided additional advice to EPA in a letter to the Administrator requesting reconsideration of CASAC's recommendations for both the primary and secondary $PM_{2.5}$ standards as well as standards for thoracic coarse particles (Henderson, 2006). Major issues raised in the public comments are discussed throughout the preamble of this final action. A comprehensive summary of all significant comments, along with EPA's responses (henceforth ''Response to Comments''), can be found in the docket for this rulemaking (Docket No. EPA–HQ–OAR–2001–0017).

In the proposal, EPA recognized that there were a number of new scientific studies on the health effects of PM that had been published recently and therefore were not included in the Criteria Document.[4] The EPA committed to conduct a review and assessment of any significant ''new'' studies, including studies submitted during the public comment period. The purpose of this review was to ensure that the Administrator was fully aware of the ''new'' science before making a final decision on whether to revise the current PM NAAQS. The EPA screened and surveyed the recent literature, including studies submitted during the public comment period, and conducted a provisional assessment (EPA, 2006a) that places the results of those studies of potentially greatest policy relevance in the context of the findings of the Criteria Document.

The provisional assessment found that the ''new'' studies expand the scientific information and provide important insights on the relationship between PM exposure and health effects of PM. The provisional assessment also found that ''new'' studies generally strengthen the evidence that acute and chronic exposure to fine particles and acute exposure to thoracic coarse particles are associated with health effects; some of the ''new'' epidemiologic studies report effects in areas with lower concentrations of $PM_{2.5}$ or $PM_{10-2.5}$ than those in earlier reports; ''new'' toxicology and epidemiologic studies link various health effects with a range of fine particle sources and components; and ''new'' toxicology studies report effects of thoracic coarse particles but do not provide evidence to support distinguishing effects from exposure to urban and rural particles. Further, the provisional assessment found that the results reported in the studies do not dramatically diverge from previous findings, and, taken in context with the findings of the Criteria Document, the new information and findings do not materially change any of the broad scientific conclusions regarding the health effects of PM exposure made in the Criteria Document.

The EPA believes it was important to conduct a provisional assessment in this case, so that the Administrator would be aware of the science that developed too recently for inclusion in the Criteria Document. However it is also important to note that EPA's review of that science to date has been limited to screening, surveying, and preparing a provisional assessment of these studies. Having performed this limited provisional assessment, EPA must decide whether to consider the newer studies in this review and take such steps as may be necessary to include them in the basis for the final decision, or to reserve such action for the next review of the PM NAAQS.

As in prior NAAQS reviews, EPA is basing its decision in this review on studies and related information included in the Criteria Document and Staff Paper, which have undergone CASAC and public review. The studies assessed in the Criteria Document, and the integration of the scientific evidence presented in that document, have undergone extensive critical review by EPA, CASAC, and the public during the development of the Criteria Document. The rigor of that review makes these studies, and their integrative assessment, the most reliable source of scientific information on which to base decisions on the NAAQS, decisions that all parties recognize as of great import. NAAQS decisions can have profound impacts on public health and welfare, and NAAQS decisions should be based on studies that have been rigorously assessed in an integrative manner not only by EPA but also by the statutorily mandated independent advisory committee, as well as the public review that accompanies this process. As described above, the provisional assessment did not and could not provide that kind of in-depth critical review.

This decision is consistent with EPA's practice in prior NAAQS reviews. Since the 1970 amendments, the EPA has taken the view that NAAQS decisions are to be based on scientific studies and related information that have been assessed as a part of the pertinent air quality criteria. See *e.g.*, 36 FR 8186 (April 30, 1971) (EPA based original NAAQS for six pollutants on scientific studies discussed in air quality criteria documents and limited consideration of comments to those concerning validity of scientific basis); 38 FR 25678, 25679–25680 (September 14, 1973) (EPA revised air quality criteria for sulfur oxides to provide basis for reevaluation of secondary NAAQS). This longstanding interpretation was strengthened by new legislative requirements enacted in 1977, which added section 109(d)(2) of the Act concerning CASAC review of air quality criteria. EPA has consistently followed this approach. 52 FR 24634, 24637 (July 1, 1987) (after review by CASAC, EPA issued a post-proposal addendum to the PM Criteria Document, to address certain new scientific studies not included in the 1982 Criteria Document); 61 FR 25566, 25568 (May 22, 1996) (after review by CASAC, EPA issued a post-proposal supplement to the 1982 Criteria Document to address certain new health studies not included in the 1982 Criteria Document or 1986 Addendum). The EPA recently reaffirmed this approach in its decision not to revise the ozone NAAQS in 1993, as well as in its final decision on the PM NAAQS in the 1997 review. 58 FR 13008, 13013–13014 (March 9, 1993) (ozone review); 62 FR 38652, 38662 (July 18, 1997) (The EPA conducted a provisional assessment but based the final PM decision on studies and related information included in the air quality criteria that had been reviewed by CASAC).

As discussed in EPA's 1993 decision not to revise the NAAQS for ozone, new studies may sometimes be of such significance that it is appropriate to delay a decision on revision of NAAQS and to supplement the pertinent air quality criteria so the new studies can be taken into account (58 FR at 13013–13014, March 9, 1993). In the present case, the provisional assessment of recent studies concludes that, taken in context, the new information and findings do not materially change any of the broad scientific conclusions regarding the health effects of PM exposure made in the Criteria

[4] For ease of reference, these studies will be referred to as ''new'' studies or ''new'' science, using quotation marks around the word *new.* Referring to studies that were published too recently to have been included in the 2004 Criteria Document as ''new'' studies is intended to clearly differentiate such studies from those that have been published since the last review and are included in the 2004 Criteria Document (these studies are sometimes referred to as new (without quotation marks) or more recent studies, to indicate that they were not included in the 1996 Criteria Document and thus are newly available in this review).

Document. For this reason, reopening the air quality criteria review would not be warranted even if there were time to do so under the court order governing the schedule for this rulemaking. Accordingly, EPA is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review. The EPA will consider the newly published studies for purposes of decision making in the next periodic review of the PM NAAQS, which will provide the opportunity to fully assess them through a more rigorous review process involving EPA, CASAC, and the public.

In order to facilitate a comprehensive and timely review of the newly available science, the Administrator has directed EPA staff to begin the next review of the PM NAAQS immediately.[5]

D. Related Control Programs To Implement PM Standards

States are primarily responsible for ensuring attainment and maintenance of ambient air quality standards once EPA has established them. Under section 110 of the CAA (42 U.S.C. 7410) and related provisions, States are to submit, for EPA approval, State implementation plans (SIPs) that provide for the attainment and maintenance of such standards through control programs directed to sources of the pollutants involved. The States, in conjunction with EPA, also administer the prevention of significant deterioration (PSD) program under sections 160–169 of the CAA (42 U.S.C. 7470–7479) for these pollutants. In addition, the Act provides for nationwide reductions in emissions of these and other air pollutants through related programs, such as the Federal Mobile Source Control Program under Title II of the CAA (42 U.S.C. 7521–7574), which involves controls for automobile, truck, bus, motorcycle, nonroad and off-highway engines and aircraft emissions; the new source performance standards under section 111 (42 U.S.C. 7411); and the national emission standards for hazardous air pollutants under section 112 (42 U.S.C. 7412).

As described in a recent EPA report, *The Particle Pollution Report: Current Understanding of Air Quality and Emissions through 2003* (EPA, 2004b), State and Federal programs have made substantial progress in reducing ambient concentrations of PM_{10} and $PM_{2.5}$. For example, PM_{10} concentrations have decreased 31 percent nationally since 1988. Regionally, PM_{10} concentrations decreased most in areas with historically higher concentrations—the Northwest (39 percent decline), the Southwest (33 percent decline), and southern California (35 percent decline). Direct emissions of PM_{10} have decreased approximately 25 percent nationally since 1988.

Programs aimed at reducing direct emissions of particles have played an important role in reducing PM_{10} concentrations, particularly in western areas. Some examples of PM_{10} controls include paving unpaved roads and using best management practices for agricultural sources of resuspended soil. Of the 87 areas that were designated nonattainment for PM_{10} in the early 1990s, 64 now meet those standards. In cities that have not attained the PM_{10} standards, the number of days above the standards is down significantly.

Nationally, $PM_{2.5}$ concentrations have declined by 10 percent from 1999 to 2003. Generally, $PM_{2.5}$ concentrations have also declined the most in regions with the highest concentrations—the Southeast (20 percent decline), southern California (16 percent decline), and the Industrial Midwest (9 percent decline). With the exception of the Northeast, the remaining regions posted modest declines in $PM_{2.5}$ concentrations from 1999 to 2003. Direct emissions of $PM_{2.5}$ have decreased by 5 percent nationally over the past 5 years.

National programs that affect regional emissions have also contributed to lower sulfate concentrations and, consequently, to lower $PM_{2.5}$ concentrations, particularly in the Industrial Midwest and Southeast. National ozone-reduction programs designed to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) have also helped reduce carbon and nitrates, both of which are components of $PM_{2.5}$. Additionally, EPA's Acid Rain Program has substantially reduced sulfur dioxide (SO_2) emissions from power plants since 1995 in the eastern United States, contributing to lower PM concentrations. Nationally, SO_2 emissions have declined 9 percent, NO_X emissions have declined 9 percent, and VOC emissions have declined by 12 percent from 1999 to 2003. In eastern States affected by the Acid Rain Program, sulfates decreased 7 percent over the same period.

Over the next 10 to 20 years, national and regional regulations will make major reductions in ambient $PM_{2.5}$ levels. The Clean Air Interstate Rule (CAIR) and the NO_X SIP Call will further reduce SO_2 and NO_X emissions from electric generating units and industrial boilers across the eastern half of the U.S.; regulations to implement the 1997 ambient air quality standards for $PM_{2.5}$ will require direct $PM_{2.5}$ and $PM_{2.5}$ precursor controls in nonattainment areas; and new national mobile source regulations affecting heavy-duty diesel engines, highway vehicles, and other mobile sources will reduce emissions of NO_X, direct $PM_{2.5}$, SO_2, and VOCs. The EPA estimates that these regulations for stationary and mobile sources will cut SO_2 emissions by 6 million tons annually in 2015 from 2001 levels. Emissions of NO_X will be cut by 9 million tons annually in 2015 from 2001 levels. Emissions of VOCs will drop by 3 million tons, and direct $PM_{2.5}$ emissions will be cut by 200,000 tons in 2015, compared to 2001 levels.

In 2005, 39 nonattainment areas were designated as not attaining the $PM_{2.5}$ standards established in 1997. SIPs for these areas are due in April 2008. Nonattainment areas are required to attain the standards as ''expeditiously as practicable'' based on implementation of federal measures already in place and the adoption of other reasonable control strategies for sources located in the nonattainment area and state. The presumptive timeframe for attainment is within five years of designation, although EPA may approve extended attainment dates of an additional one to five years for areas with more serious problems.

Modeling done by EPA indicates that by 2010, 18 of the 39 currently designated nonattainment areas are projected to come into attainment with those standards just based on regulatory programs already in place, including CAIR, the Clean Diesel Rules, and other Federal measures. Between 2010 and 2015, further reductions in PM concentrations in the eastern U.S. are projected due to existing federal programs alone, on the order of 0.5 to 1.5 $\mu g/m^3$. All areas in the eastern U.S. will have lower $PM_{2.5}$ concentrations in 2015 relative to present-day conditions. In most cases, the predicted improvement in $PM_{2.5}$ ranges from 10 percent to 20 percent.

E. Summary of Proposed Revisions to the PM NAAQS

For reasons discussed in the proposal, the Administrator proposed to revise the current primary and secondary $PM_{2.5}$ and PM_{10} standards. With regard to the primary $PM_{2.5}$ standards, the Administrator proposed to revise the level of the 24-hour $PM_{2.5}$ standard to 35

[5] The EPA has recently conducted a review of the process by which the Agency performs periodic NAAQS reviews to identify ways in which the process could be strengthened and streamlined (EPA, 2006b). The EPA intends to incorporate recommendations from the NAAQS process review into the next PM NAAQS review.

μg/m³, and to revise the form of the annual $PM_{2.5}$ standard by changing the constraints on the optional use of spatial averaging to include the criterion that the minimum correlation coefficient between monitor pairs to be averaged be 0.9 or greater, determined on a seasonal basis, and the criterion that differences between monitor values not exceed 10 percent. Related revisions for $PM_{2.5}$ data handling conventions and for the reference method for monitoring PM as $PM_{2.5}$ were also proposed.

With regard to the primary PM_{10} standards, the Administrator proposed to revise the current standards to provide more targeted protection from thoracic coarse particles that are of concern to public health. In part, the Administrator proposed to establish a new indicator for thoracic coarse particles in terms of $PM_{10-2.5}$, the definition of which included qualifications that identified both the mix of such particles that were provisionally determined to be of concern to public health, and were thus included in the indicator, and those for which currently available information was provisionally determined to be insufficient as a basis from which to infer a public health concern, and were thus excluded. More specifically, the proposed $PM_{10-2.5}$ indicator was qualified so as to include any ambient mix of $PM_{10-2.5}$ that is dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, and to exclude any ambient mix of $PM_{10-2.5}$ that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources. The Administrator also proposed that agricultural sources, mining sources, and other similar sources of crustal material shall not be subject to control in meeting the proposed standard. The Administrator proposed to replace the current primary 24-hour PM_{10} standard with a 24-hour standard defined in terms of this new $PM_{10-2.5}$ indicator. The proposed new standard would be met at an ambient air quality monitoring site when the 3-year average of the annual 98th percentile 24-hour average $PM_{10-2.5}$ concentration is less than or equal to 70 μg/m³, which would generally maintain the degree of public health protection afforded by the current PM_{10} standards from short-term exposure to thoracic coarse particles of concern. Requirements for monitoring sites that would be appropriate for determining compliance with this proposed $PM_{10-2.5}$ standard were included as part of proposed revisions to EPA's ambient air monitoring regulations (see 71 FR 2710, 2736–2728 and 71 FR 2706–2707 (proposing to incorporate these requirements as part of the standard)). These proposed requirements included a five-part test for determining whether a potential monitoring site is suitable for comparison to the standard, all five parts of which had to be met. In summary, the suitability test included the following general provisions: a monitoring site must be within an urbanized area that has a population of at least 100,000 persons; the site must be within a block group with a population density greater than 500 people per square mile; the site must be a ''population-oriented'' site; the site may not be adjacent to a large emissions source or otherwise within the micro-scale environment affected by a large source; and, if the first four provisions are met, a site-specific assessment must show that the ambient mix of $PM_{10-2.5}$ sampled at the site would be dominated by resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources, and would not be dominated by rural windblown dust and soils and PM generated by agricultural and mining sources. Related new $PM_{10-2.5}$ data handling conventions and a new reference method for monitoring PM as $PM_{10-2.5}$ were also proposed. The Administrator also proposed to revoke and not replace the annual PM_{10} standard.

With regard to the secondary $PM_{2.5}$ and PM_{10} standards, the Administrator proposed to revise the current standards by making them identical in all respects to the proposed primary $PM_{2.5}$ and $PM_{10-2.5}$ standards to address PM-related welfare effects including visibility impairment, effects on vegetation and ecosystems, materials damage and soiling, and effects on climate change.

F. Organization and Approach to Final PM NAAQS Decisions

This action presents the Administrator's final decisions on the review of the current primary and secondary $PM_{2.5}$ and PM_{10} standards. Primary standards for fine particles and for thoracic coarse particles are addressed below in sections II and III, respectively. Consistent with the decisions made by EPA in the last review and with the conclusions in the Criteria Document and Staff Paper, fine and thoracic coarse particles continue to be considered as separate subclasses of PM pollution. Secondary standards for fine and thoracic coarse particles are addressed below in section IV. Related data handling conventions and federal reference methods for monitoring PM are addressed below in sections V and VI, respectively.

Today's final decisions separately addressing fine and thoracic coarse particles are based on a thorough review in the Criteria Document of scientific information on known and potential human health and welfare effects associated with exposure to these subclasses of PM at levels typically found in the ambient air. These final decisions also take into account: (1) Staff assessments in the Staff Paper of the most policy-relevant information in the Criteria Document as well as a quantitative risk assessment based on that information; (2) CASAC advice and recommendations, as reflected in its letters to the Administrator, its discussions of drafts of the Criteria Document and Staff Paper at public meetings, and separate written comments prepared by individual members of the CASAC PM Review Panel [6] (henceforth, ''CASAC Panel''); (3) public comments received during the development of these documents, either in connection with CASAC meetings or separately; and (4) extensive public comments received on the proposed rulemaking.

II. Rationale for Final Decisions on Primary $PM_{2.5}$ Standards

A. Introduction

1. Overview

This section presents the Administrator's final decisions regarding the need to revise the current primary $PM_{2.5}$ NAAQS, and, more specifically, regarding revisions to the level of the 24-hour standard and to the form of the annual standard. As discussed more fully below, the rationale for the final decision on appropriate revisions to the primary $PM_{2.5}$ NAAQS includes consideration of: (1) Evidence of health effects related to short- and long-term exposures to fine particles; (2) insights gained from a quantitative risk assessment; and (3) specific conclusions regarding the need for revisions to the current standards and the elements of $PM_{2.5}$ standards (i.e., indicator, averaging time, form, and level) that, taken together, are requisite to protect public health with an adequate margin of safety.

In developing this rationale, EPA has drawn upon an integrative synthesis of the entire body of evidence on associations between exposure to

[6] The CASAC PM Review Panel is comprised of the seven members of the chartered CASAC, supplemented by fifteen subject-matter experts appointed by the Administrator to provide additional scientific expertise relevant to this review of the PM NAAQS.

ambient fine particles and a broad range of health endpoints (EPA, 2004a, Chapter 9), focusing on those health endpoints for which the Criteria Document concluded that the associations are likely to be causal. This body of evidence includes hundreds of studies conducted in many countries around the world, using various indicators of fine particles. In its assessment of the evidence judged to be most relevant to decisions on elements of the primary $PM_{2.5}$ standards, EPA has placed greater weight on U.S. and Canadian studies using $PM_{2.5}$ measurements, since studies conducted in other countries may well reflect different demographic and air pollution characteristics.

As with virtually any policy-relevant scientific research, there is uncertainty in the characterization of health effects attributable to exposure to ambient fine particles, most generally with regard to whether observed associations are likely causal in nature and, if so, whether there are exposure levels below which such associations are no longer likely. As discussed below, an unprecedented amount of new research has been conducted since the last review, with important new information coming from epidemiologic, toxicologic, controlled human exposure, and dosimetric studies. Moreover, the newly available research studies evaluated in the Criteria Document have undergone intensive scrutiny through multiple layers of peer review, with extended opportunities for review and comment by CASAC and the public. While important uncertainties remain, the review of the health effects information has been extensive and deliberate. In the judgment of the Administrator, this intensive evaluation of the scientific evidence provides an adequate basis for regulatory decision making at this time. This review also provides important input to EPA's research plan for improving our future understanding of the relationships between exposures to ambient fine particles and health effects.

The health effects information and quantitative risk assessment were summarized in sections II.A and II.B of the proposal (71 FR 2626–2641) and are only briefly outlined below in sections II.A.2 and II.A.3. Subsequent sections of this preamble provide a more complete discussion of the Administrator's rationale, in light of key issues raised in public comments, for concluding that it is appropriate to revise the current primary $PM_{2.5}$ standards (section II.B), as well as a more complete discussion of the Administrator's rationale for retaining or revising the specific elements of the primary $PM_{2.5}$ standards, namely the indicator (section II.C); averaging time (section II.D); form (section II.E); and level (section II.F). A summary of the final decisions on revisions to the primary $PM_{2.5}$ standards is presented in section II.G.

2. Overview of Heath Effects Evidence

This section briefly outlines the information presented in Section II.A of the proposal on the health effects associated with exposure to fine particles. As was true in the last review, evidence from epidemiologic studies plays a key role in the Criteria Document's evaluation of the scientific evidence. Some highlights of the new epidemiologic evidence available since the last review include:

(1) New multi-city studies that use uniform methodologies to investigate the effects of various indicators of PM on health with data from multiple locations with varying climate and air pollution mixes, contributing to increased understanding of the role of various potential confounders, including gaseous co-pollutants, on observed associations with fine particles. These studies provide more precise estimates of the magnitude of an effect of exposure to PM, including fine particles, than most smaller-scale individual city studies.

(2) More studies of various health endpoints evaluating associations between effects and exposures to fine particles and thoracic coarse particles (discussed below in section III), as well as ultrafine particles or specific components (e.g., sulfates, nitrates, metals, organic compounds, and elemental carbon) of fine particles.

(3) Numerous studies of cardiovascular endpoints, with particular emphasis on assessment of cardiovascular risk factors or physiological changes.

(4) Studies relating population exposure to fine particles and other pollutants measured at centrally located monitors to estimates of exposure to ambient pollutants at the individual level. Such studies have led to a better understanding of the relationship between ambient fine particle levels and personal exposures to fine particles of ambient origin.

(5) New statistical approaches to addressing issues related to potential confounding by gaseous co-pollutants, possible thresholds for effects, and measurement error and exposure misclassification.[7]

(6) Efforts to evaluate the effects of fine particles from different sources (e.g., motor vehicles, coal combustion, vegetative burning, crustal[8]), using factor analysis or source apportionment methods with fine particle speciation data.

(7) New ''intervention studies'' providing evidence for improvements in respiratory or cardiovascular health with reductions in ambient concentrations of particles and gaseous co-pollutants.

In addition, the body of evidence on PM-related effects has greatly expanded since the last review with findings from studies of potential mechanisms or pathways by which particles may result in the effects identified in the epidemiologic studies. These studies include important new dosimetry, toxicologic and controlled human exposure studies, as highlighted below.

(8) Animal and controlled human exposure studies using concentrated ambient particles (CAPs), new indicators of response (e.g., C-reactive protein and cytokine levels, heart rate variability), and animal models simulating sensitive human subpopulations. The results of these studies are relevant to evaluation of plausibility of the epidemiologic evidence and provide insights into potential mechanisms for PM-related effects.

(9) Dosimetry studies using new modeling methods that provide increased understanding of the dosimetry of different particle size classes and in members of potentially sensitive subpopulations, such as people with chronic respiratory disease.

Section II.A of the proposal provides a detailed summary of key information contained in the Criteria Document (EPA, 2004a, Chapters 6–9), and in the Staff Paper (EPA, 2005, Chapter 3), on the known and potential effects associated with exposure to fine particles including information on specific constituents and information on the effects of fine particles in combination with other pollutants that are routinely present in the ambient air

[7] ''Confounding'' occurs when a health effect that is caused by one risk factor is attributed to another variable that is correlated with the causal risk factor; epidemiologic analyses attempt to adjust or control for potential confounders (EPA, 2004a, section 8.1.3.2; EPA, 2005, section 3.6.4). A ''threshold'' is a concentration below which it is expected that effects are not observed (EPA, 2004a, section 8.4.7; EPA, 2005, section 3.6.6). ''Gaseous co-pollutants'' generally refer to other commonly-occurring air pollutants, specifically O_3, CO, SO_2 and NO_2. ''Measurement error'' refers to uncertainty in the air quality measurements, while ''exposure misclassification'' includes uncertainty in the use of ambient pollutant measurements in characterizing population exposures to PM (EPA, 2004a, section 8.4.5; EPA, 2005, section 3.6.2)

[8] ''Crustal'' is used here to describe particles of geologic origin, which can be found in both fine- and coarse-fraction PM.

(71 FR 2626–2637). The information highlighted there summarizes:

(1) Multiple biologic mechanisms that may be responsible for morbidity/mortality effects associated with exposure to ambient fine particles, including potential mechanisms or pathways related to direct effects on the respiratory system, systemic effects that are secondary to effects in the respiratory system including cardiovascular effects, or direct cardiovascular effects.

(2) The nature of the effects that have been reported to be associated with fine particle exposures including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions and emergency department visits), changes in lung function and increased respiratory symptoms, as well as new evidence for more subtle indicators of cardiovascular health.

(3) An integrated evaluation of the health effects evidence, with emphasis on key issues raised in interpreting epidemiological studies, along with supporting evidence from experimental (e.g., dosimetric and toxicologic) studies.

(4) Sensitive or vulnerable subpopulations that appear to be at greater risk to such effects, including individuals with pre-existing heart and lung diseases, older adults, and children.

(5) Conclusions, based on the magnitude of these subpopulations and risks identified in health studies, that exposure to ambient fine particles can have substantial public health impacts.

3. Overview of Quantitative Risk Assessment

In addition to a comprehensive evaluation of the health effects evidence available in this review, EPA conducted a quantitative health risk assessment for selected health effects to provide additional information and insights that can help inform decision making on the NAAQS, while recognizing the limitations of such an assessment.[9] As discussed in section II.B of the proposal, the approach used to develop quantitative risk estimates associated with exposures to $PM_{2.5}$ was built upon the more limited risk assessment conducted during the last review (61 FR 65650). The expanded and updated assessment conducted in this review included estimates of risks of mortality (total non-accidental, cardiovascular, and respiratory), morbidity (hospital admissions for cardiovascular and respiratory causes), and respiratory symptoms (not requiring hospitalization) associated with recent short-term (daily) ambient $PM_{2.5}$ levels and risks of total, cardiopulmonary, and lung cancer mortality associated with long-term exposure to $PM_{2.5}$ in a number of example urban areas.[10]

The EPA recognized that there were many sources of uncertainty and variability inherent in the inputs to this assessment and that there was a high degree of uncertainty in the resulting $PM_{2.5}$ risk estimates. Such uncertainties generally relate to a lack of clear understanding of a number of important factors, including, for example, the shape of concentration-response functions, particularly when, as here, effect thresholds can neither be discerned nor determined not to exist; issues related to selection of appropriate statistical models for the analysis of the epidemiologic data; the role of potentially confounding and modifying factors in the concentration-response relationships; issues related to simulating how $PM_{2.5}$ air quality distributions will likely change in any given area upon attaining a particular standard, since strategies to reduce emissions are not yet defined; and whether there would be differential reductions in the many components within $PM_{2.5}$ and, if so, whether this would result in differential reductions in risk. While some of these uncertainties were addressed quantitatively in the form of estimated confidence ranges around central risk estimates, other uncertainties and the variability in key inputs were not reflected in these confidence ranges, but rather were addressed through separate sensitivity analyses or characterized qualitatively.

The concentration-response relationships used in the assessment were based on findings from human epidemiological studies that relied on fixed-site, population-oriented, ambient monitors as a surrogate for actual ambient $PM_{2.5}$ exposures. The risk assessment included a series of base case estimates that, for example, included various cutpoints intended as surrogates for alternative assumed population thresholds. In its review of the Staff Paper and risk assessment, the CASAC Panel commented that for the purpose of estimating public health impacts, it ''favored the primary use of an assumed threshold of 10 $\mu g/m^3$ '' and that ''a major research need is for more work to determine the existence and level of any thresholds that may exist or the shape of nonlinear concentration-response curves at low levels of exposure that may exist'' (Henderson, 2005a). Other uncertainties were addressed in various sensitivity analyses (e.g., the use of single-versus multi-pollutant models, use of single-versus multi-city models, use of a distributed lag model) and had a more moderate and often variable impact on the risk estimates in some or all of the cities.

Key observations and insights from the $PM_{2.5}$ risk assessment, together with important caveats and limitations, were discussed in section II.B of the proposal. In general, estimated risk reductions associated with going from just meeting the current suite of $PM_{2.5}$ standards to just meeting alternative suites of annual and 24-hour standards for all the various assumed cutpoints show patterns of increasing estimated risk reductions as either the annual or 24-hour standard, or both, were reduced over the range considered in this assessment, and the estimated percentage reductions in risk were strongly influenced by the assumed cutpoint level (see EPA, 2005, Figures 5–1, 5–2, 5A–1, and 5A–2). In comparing the risk estimates for the only two specific locations that were included in both the prior and current assessments, the magnitude of the estimates associated with just meeting the current annual standard, in terms of percentage of total incidence, were very similar for mortality associated with long-term exposures. Current risk estimates for just meeting the current suite of $PM_{2.5}$ standards were similar in one of the locations (Philadelphia) and somewhat lower in the other location (Los Angeles) for mortality associated with short-term exposures.

B. Need for Revision of the Current Primary $PM_{2.5}$ Standards

1. Introduction

The initial issue to be addressed in the current review of the primary $PM_{2.5}$ standards is whether, in view of the advances in scientific knowledge reflected in the Criteria Document and Staff Paper, the existing standards should be revised. As discussed in section II.A of the proposal (71 FR 2625–2637), the Staff Paper concluded, based on the information and

[9] The EPA continues to support the development and application of risk assessment methods with the goal of improving the characterization of risks and the communication of uncertainties in such risk estimates.

[10] The risk assessment was discussed in the Staff Paper (EPA, 2005, chapter 4) and presented more fully in a technical support document, Particulate Matter Health Risk Assessment for Selected Urban Areas (Abt Associates, 2005). The assessment scope and methodology were developed with considerable input from the CASAC Panel and the public, with CASAC concluding that the general assessment methodology and framework were appropriate (Hopke, 2002).

conclusions presented in the Criteria Document, that while important uncertainties and research questions remain, much progress has been made since the last review in reducing some key uncertainties related to our understanding of the scientific evidence. The newly available information generally reinforces and provides increased confidence in the likely causal nature of the associations between short- and long-term exposure to $PM_{2.5}$ and mortality and morbidity effects observed in the last review, and provides additional information to inform judgments as to the extent to which such associations likely remain at lower exposure levels within the range of ambient air quality.

The examination of short- and long-term exposures to specific components, properties, and sources of fine particles and mixtures of fine particles with gaseous co-pollutants that are linked with health effects, and the biological mechanisms underlying the observed linkages, remain important research needs. Other important research needs include better characterizing the shape of concentration-response functions, including identification of potential threshold levels, and methodological issues such as those associated with selecting appropriate statistical models in time-series studies to address time-varying factors (such as weather) and other factors (such as other pollution variables), and better characterizing population exposures.

Nonetheless, important progress has been made in advancing our understanding of potential mechanisms by which ambient $PM_{2.5}$, alone and in combination with other pollutants, is causally linked with cardiovascular, respiratory, and lung cancer associations observed in epidemiologic studies. Due to reanalyses and extensions of key long-term exposure studies, there is now greater confidence in the causal nature of associations with long-term exposures to fine particles than in the last review. There is also an increased understanding of the populations that are the most susceptible to $PM_{2.5}$-related effects. In addition, health effect associations reported in epidemiologic studies have been found to be generally robust to confounding by co-pollutants, especially for the more numerous short-term exposure studies. Further, while groups of commenters had differing views on the extent to which, if at all, newly available evidence increases confidence in associations between $PM_{2.5}$ and mortality and morbidity effects, and on the extent of progress that has been made in reducing uncertainties since the last review, virtually no commenters argued for any relaxation of the current $PM_{2.5}$ standards. Based on these considerations, EPA finds that overall the available evidence has increased the scientific basis supporting the health impacts of exposure to $PM_{2.5}$, and not lessened it, providing clear support for fine particle standards that are at least as protective as the current $PM_{2.5}$ standards.

Having reached this initial conclusion, EPA addresses the question whether the available evidence supports consideration of standards that are more protective than the current $PM_{2.5}$ standards. In considering this question, EPA first notes that the current standards were set as a suite that together would most effectively and efficiently protect the public against health effects related to both short- and long-term exposures to fine particles (62 FR at 38669). In so doing, the Agency set the annual standard to be the ''generally controlling'' standard for lowering both short- and long-term $PM_{2.5}$ concentrations. In conjunction with such an annual standard, the current 24-hour standard was set to provide only supplemental protection against days with high peak $PM_{2.5}$ concentrations, localized ''hotspots,'' or risks arising from seasonal emissions that might not be well controlled by a national annual standard. As discussed below in section II.F, in considering what evidence to use as the basis for the 1997 annual standard, EPA placed greater emphasis on the short-term exposure studies, which were judged to be the strongest evidence at that time. The long-term exposure studies available at that time provided only supporting evidence for the annual standard, which was set primarily based on short-term exposure studies.

In addressing the question whether the evidence now available in this review supports consideration of standards that are more protective than the current $PM_{2.5}$ standards, the Staff Paper considered whether (1) statistically significant health effects associations with short-term exposures to fine particles occur in areas that would likely meet the current $PM_{2.5}$ standards, or (2) associations with long-term exposures to fine particles extend down to lower air quality levels than had previously been observed.[11]

In considering the available epidemiologic evidence in this review to address the question of whether more protective standards should be considered, the Staff Paper took a broader approach than was used in the last review. This approach reflects the more extensive and stronger body of evidence now available on health effects related to both short- and long-term exposure to $PM_{2.5}$, and places relatively greater emphasis on evidence from long-term exposure studies than was done in the last review. As discussed below in section II.F, this broader approach was used at the time of proposal to consider the much expanded body of evidence from short-term exposure studies as the principal basis for setting the 24-hour standard to protect against health effects associated with short-term exposures to $PM_{2.5}$, and to consider the stronger and more robust body of evidence from long-term exposure $PM_{2.5}$ studies as the principal basis for setting the annual standard to protect against health effects associated with long-term exposures to $PM_{2.5}$.

In first considering whether areas in which short-term exposure studies have been conducted would likely meet the current $PM_{2.5}$ standards, the focus is principally on comparing the long-term average $PM_{2.5}$ concentration in a study area with the level of the current ''generally controlling'' annual $PM_{2.5}$ standard. In considering the available epidemiologic evidence related to short-term exposures, the Staff Paper focused on specific epidemiologic studies that show statistically significant associations between $PM_{2.5}$ and health effects for which the Criteria Document judged associations with $PM_{2.5}$ to be likely causal (EPA, 2005, section 5.3.1.1). Many more U.S. and Canadian studies are now available that provide evidence of associations between short-term exposure to $PM_{2.5}$ and serious health effects in areas with air quality at and above the level of the current annual $PM_{2.5}$ standard (15 $\mu g/m^3$). Moreover, a few newly available short-term exposure mortality studies provide evidence of statistically significant associations with $PM_{2.5}$ in areas with air quality levels below the levels of the current $PM_{2.5}$ standards. In considering these studies, the Staff Paper focused on those that include adequate gravimetric $PM_{2.5}$ mass measurements, and noted where the associations are generally robust to alternative model specification and to the inclusion of potentially confounding co-pollutants. Three

[11] In addressing this question, the Criteria Document had recognized that although there are likely biologic threshold levels in individuals for specific health responses, the available epidemiologic evidence neither supports nor refutes the existence of thresholds at the population level for the effects of $PM_{2.5}$ on mortality across the range of concentrations in the studies, for either long-term or short-term $PM_{2.5}$ exposures (EPA, 2004a, section 9.2.2.5).

studies, conducted in Phoenix (Mar *et al.*, 2003), Santa Clara County, CA (Fairley, 2003) and eight Canadian cities (Burnett and Goldberg, 2003), report statistically significant associations between short-term $PM_{2.5}$ exposure and total or cardiovascular mortality in areas in which long-term average $PM_{2.5}$ concentrations ranged between 13 and 14 μg/m³ and 98th percentile 24-hour concentrations ranged between 32 and 59 μg/m³.[12]

In also considering the new epidemiologic evidence available from U.S. and Canadian studies of long-term exposure to fine particles, the Criteria Document noted that new studies have built upon studies available in the last review and concluded that these studies have confirmed and strengthened the evidence of associations for both mortality and respiratory morbidity (EPA, 2004a, section 9.2.3). For mortality, the Criteria Document placed greatest weight on the reanalyses and extensions of the Six Cities and ACS studies, finding that these studies provide strong evidence for associations with fine particles (EPA, 2004a, p. 9–34), notwithstanding the lack of consistent results in other long-term exposure studies. For morbidity, the Criteria Document found that new studies of a cohort of children in Southern California have built upon earlier limited evidence to provide fairly strong evidence that long-term exposure to fine particles is associated with development of chronic respiratory disease and reduced lung function growth (EPA, 2004a, pp. 9–33 to 9–34). In addition to strengthening the evidence of association, the new extended ACS mortality study (Pope *et al.*, 2002) observed statistically significant associations with cardiorespiratory mortality (including lung cancer mortality) across a range of long-term mean $PM_{2.5}$ concentrations that was lower than was reported in the original ACS study available in the last review.

Beyond the epidemiologic studies using $PM_{2.5}$ as an indicator of fine particles, a large body of newly available evidence from studies that used PM_{10} in areas where fine particles would likely dominate this measurement, as well as other indicators or components of fine particles (e.g., sulfates, combustion-related components), provides additional support for the conclusions reached in the last review as to the likely causal role of ambient PM, and the likely importance of fine particles in contributing to observed health effects. Such studies notably include new multi-city studies, intervention studies (that relate reductions in ambient PM to observed improvements in respiratory or cardiovascular health), and source-oriented studies (e.g., suggesting associations with combustion- and vehicle-related sources of fine particles). The Criteria Document also noted that new epidemiologic studies of asthma-related increased physician visits and symptoms, as well as new studies of cardiac-related risk factors, suggest likely much larger public health impacts due to ambient fine particles than just those indexed by the mortality and morbidity effects considered in the last review (EPA, 2004a, p. 9–94).

In reviewing this information, the Staff Paper recognized that important limitations and uncertainties associated with this expanded body of evidence for $PM_{2.5}$ and other indicators or components of fine particles need to be carefully considered in determining the weight to be placed on the body of studies available in this review. For example, the Criteria Document noted that although PM-effects associations continue to be observed across most new studies, the newer findings do not fully resolve the extent to which the associations are properly attributed to PM acting alone or in combination with other gaseous co-pollutants or to the gaseous co-pollutants themselves. The Criteria Document concluded, however, that overall the newly available epidemiologic evidence, especially for the more numerous short-term exposure studies, substantiates that associations for various PM indicators with mortality and morbidity are robust to confounding by co-pollutants (EPA, 2004a, p. 9–37).

While the limitations and uncertainties in the available evidence suggest caution in interpreting the epidemiologic studies at the lower levels of air quality observed in the studies, the Staff Paper concluded that the evidence now available provides strong support for considering fine particle standards that would provide increased protection beyond that afforded by the current $PM_{2.5}$ standards. The Staff Paper noted that a more protective suite of $PM_{2.5}$ standards would reflect the generally stronger and broader body of evidence of associations with mortality and morbidity now available in this review, both in short-term exposue studies at levels below the current standards and in long-term exposure studies that extend to lower levels of air quality than in earlier studies, as well as increased understanding of possible underlying mechanisms.

In addition to this evidence-based evaluation, the Staff Paper also considered the extent to which health risks estimated to occur upon attainment of the current $PM_{2.5}$ standards may be judged to be important from a public health perspective, taking into account key uncertainties associated with the quantitative health risk estimates, noted above in section II.A.3. In so doing, the Staff Paper first noted that the risk assessment addressed several key uncertainties through various base case analyses, as well as through sensitivity analyses, as noted above in section II.A.3 and discussed in section II.B of the proposal (71 FR 2637–2641). In considering the health risks estimated to occur upon attainment of the current $PM_{2.5}$ standards, the Staff Paper focused in particular on a series of base case risk estimates, while recognizing that the confidence ranges in the selected base case estimates do not reflect all the identified uncertainties. These risks were estimated using not only the linear or log-linear concentration-response functions reported in the studies,[13] but also using alternative modified linear functions as surrogates for assumed non-linear functions that would reflect the possibility that thresholds may exist in the reported associations within the range of air quality observed in the studies. Regardless of the relative weight placed on the risk estimates associated with the concentration-response functions reported in the studies or with the modified functions favored by CASAC (discussed above in section II.A.3), the risk assessment indicated the possibility that thousands of premature deaths per year would occur in urban areas across the U.S. upon attainment of the current $PM_{2.5}$

[12] As noted in the Staff Paper, these studies were reanalyzed to address questions about the application of the statistical software used in the original analyses, and the study results from Phoenix and Santa Clara County were little changed in alternative models (Mar *et al.*, 2003; Fairley, 2003), although Burnett and Goldberg (2003) reported that their results were sensitive to using different temporal smoothing methods. Two of these studies also reported significant associations with gaseous pollutants (Mar *et al.*, 2003; Fairley, 2003), and one of these studies included multi-pollutant model results in reanalyses, reporting that associations with $PM_{2.5}$ remained significant with gaseous pollutants (Fairley, 2003). The 98th percentile 24-hour concentrations were approximately 59 μg/m³ in Fairley *et al.* (2003), 39 μg/m³ in Burnett and Goldberg (2003), and 32 μg/m³ in Mar *et al.* (2003).

[13] As noted in section II.B of the proposal, the reported linear or log-linear concentration-response functions were applied down to 7.5 μg/m³ in estimating risk associated with long-term exposure (i.e., the lowest measured level in the extended ACS study), and down to the estimated policy-relevant background level in estimating risk associated with short-term exposure (i.e., 3.5 μg/m³ for eastern urban areas and 2.5 μg/m³ for western urban areas).

standards.[14] Beyond the estimated incidences of premature mortality, the Staff Paper also recognized that similarly substantial numbers of incidences of hospital admissions, emergency room visits, aggravation of asthma and other respiratory symptoms, and increased cardiac-related risk are also likely in many urban areas, based on risk assessment results (EPA, 2005, Chapter 4) and on the discussion related to this ''pyramid of effects'' in the Criteria Document (EPA, 2004a, section 9.2.5). Based on these considerations, the Staff Paper concluded that the estimates of risks likely to remain upon attainment of the current $PM_{2.5}$ standards are indicative of risks that can reasonably be judged to be important from a public health perspective (EPA, 2005, section 5.3.1.).

In considering available evidence, risk estimates, and related limitations and uncertainties, the Staff Paper concluded that the available information clearly calls into question the adequacy of the current suite of $PM_{2.5}$ standards and provides strong support for revising the current suite of $PM_{2.5}$ standards to provide increased public health protection. Also, taking into account these considerations, the CASAC advised the Administrator that a majority of CASAC Panel members were in agreement that the primary 24-hour and annual $PM_{2.5}$ standards ''should be modified to provide increased public health protection'' (Henderson, 2005a). The CASAC further advised that changes to either the annual standard or the 24-hour standard, or both, could be recommended, and expressed reasons that formed the basis for the consensus among the Panel members for placing more emphasis on lowering the 24-hour standard (Henderson, 2005a).[15]

At the time of proposal, in considering whether the suite of $PM_{2.5}$ standards should be revised to provide requisite public health protection, the Administrator carefully considered the rationale and recommendations contained in the Staff Paper, the advice and recommendations from CASAC, and public comments to date on this issue. In so doing, the Administrator placed primary consideration on the evidence obtained from the studies, and provisionally found the evidence of serious health effects reported in short-term exposure studies conducted in areas that would attain the current standards to be compelling, especially in light of the extent to which such studies are part of an overall pattern of positive and frequently statistically significant associations across a broad range of studies that collectively represent a strong and robust body of evidence. As discussed in the Criteria Document and Staff Paper, the Administrator recognized that much progress has been made since the last review in addressing some of the key uncertainties that were important considerations in establishing the current suite of $PM_{2.5}$ standards. For example, progress made since the last review provides increased confidence in the long-term exposure studies as a basis for considering whether any revision of the annual standard is appropriate and increased confidence in the short-term exposure studies as a basis for considering whether any revision of the 24-hour standard is appropriate.[16] In considering the risk assessment presented in the Staff Paper, the Administrator noted that the assessment contained a sensitivity analysis but not a formal uncertainty analysis, making it difficult to use the risk assessment to form a judgment of the probability of various risk estimates. Instead, the Administrator viewed the risk assessment in light of his evaluation of the underlying studies. Seen in this light, the risk assessment informs the determination of the public health significance of risks to the extent that the evidence is judged to support an effect at a particular level of air quality. Based on these considerations, the Administrator provisionally concluded that the current $PM_{2.5}$ standards, taken together, are not requisite to protect public health with an adequate margin of safety and that revision is needed to provide increased public health protection.

2. Comments on the Need for Revision

General comments based on relevant factors that either support or oppose any change to the current suite of $PM_{2.5}$ primary standards are addressed in this section. Comments on specific short- and long-term exposure studies that relate to consideration of the appropriate levels of the 24-hour and annual $PM_{2.5}$ standards are addressed below in sections II.F.1 and II.F.2, respectively. General comments based on implementation-related factors that are not a permissible basis for considering the need to revise the current standards are addressed in the Response to Comments document.

Many public comments received on the proposal asserted that the current $PM_{2.5}$ standards are insufficient to protect public health with an adequate margin of safety and revisions to the standards are appropriate. Among those calling for revisions to the current standards are medical groups, including the American Medical Association, the American Thoracic Society, the American Academy of Pediatrics, and the American College of Cardiology, as well as medical doctors and academic researchers. For example, the American Medical Association stated that PM air pollution is ''a national public health problem'' and supported more stringent standards based on studies that provide evidence of associations between $PM_{2.5}$ and serious health effects in areas with $PM_{2.5}$ concentrations that are below the 1997 standards. Other medical associations offered the following views in support of more protective standards:

> As professional organizations that represent physicians treating patients with diseases either caused by or exacerbated by air pollution, we are keenly aware of the impact air quality has on the individual health of our patients. As such we are committed to supporting a standard for PM that is protective of the health of vulnerable populations including children, seniors and patients with respiratory and cardiac conditions * * *. In short, a significant body of research has described potential mechanisms for and the range of health effects caused by PM air pollution. The undersigned physician organizations find the body of scientific evidence to be rigorous, comprehensive and compelling enough to justify a significant tightening of the existing NAAQS PM standards. [American Thoracic Society et al.]

In a letter signed from environmental health researchers and physicians, similar conclusions were drawn:

> More than 2,000 peer-reviewed studies have been published since 1996 * * *. These studies, as discussed and interpreted in the 2004 EPA Criteria Document, validate earlier epidemiologic studies linking both acute and chronic fine particle pollution with serious morbidity and mortality. The newer research has also expanded the list of health effects associated with PM, and has identified health effects at lower exposure levels than

[14] The Staff Paper recognized how highly dependent any specific risk estimates are on the assumed shape of the underlying concentration-response functions, noting nonetheless that mortality risks are not completely eliminated when current $PM_{2.5}$ standards are met in a number of example urban areas even using the highest assumed cutpoint levels considered in the risk assessment (EPA, 2005, p. 5–15).

[15] Of the individual Panel members who submitted written comments expressing views on appropriate levels of the $PM_{2.5}$ standards, only one did not support changes to either the 24-hour or annual standard to provide additional public health protection (Henderson, 2005a).

[16] The EPA notes that this increased confidence in the long- and short-term associations generally reflects less uncertainty as to the likely causal nature of such associations, but does not address directly the question of the extent to which such associations remain toward the lower end of the range of ambient $PM_{2.5}$ concentrations. This question is central to the Agency's evaluation of the relevant evidence to determine appropriate standards levels, as discussed below in section II.F.

previously reported. In fact, the science is now sufficiently strong that it is appropriate to conclude that $PM_{2.5}$ is causally associated with numerous adverse health effects in humans, at exposure levels far below the current standards. [Schwartz *et al.*, 2005]

Similar conclusions were also reached in comments by many national, state, and local public health organizations, including, for example, the American Lung Association, the American Heart Association, the American Cancer Society, the American Public Health Association, and the National Association of Local Boards of Health, as well as in letters to the Administrator from EPA's advisory panel on children's environmental health (Children's Health Protection Advisory Committee, 2005, 2006). All of these medical and public health commenters stated that the current $PM_{2.5}$ standards need to be revised, and that even more protective standards than those proposed by EPA are needed to protect the health of sensitive population groups. Many individual commenters also expressed such views.

State and local air pollution control authorities who commented on the $PM_{2.5}$ standards supported revision of the suite of current $PM_{2.5}$ standards, as did the National Tribal Air Association. The State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) urged that EPA revise the $PM_{2.5}$ standards in accordance with the recommendations of CASAC. Each of the individual State environmental/public health agencies that commented on the $PM_{2.5}$ standards supported revisions to the current standards, with most supporting standards consistent with CASAC's recommendations. The Northeast States for Coordinated Air Use Management (NESCAUM) argued for even more stringent revisions to the standards.

The commenters noted above primarily based their views on the body of evidence assessed in the Criteria Document, finding it to be stronger and more compelling than in the last review. These commenters generally placed much weight on CASAC's interpretation of the body of available evidence and the results of EPA's risk assessment, both of which formed the basis for CASAC's recommendation to revise the $PM_{2.5}$ standards to provide increased public health protection was based.

Some of these commenters specifically mentioned the independent reanalysis of the original ACS and Six Cities long-term exposure studies conducted by HEI (Krewski *et al.*, 2000) that concluded that the original data were of high quality, the original results could be fully replicated, and the results were robust to alternative model specifications. Some also mentioned the ACS extended study (Pope *et al.*, 2002) and the Southern California children's cohort study (Gauderman *et al.*, 2002) as providing evidence of mortality and morbidity effects associated with long-term exposures to $PM_{2.5}$ at lower levels than had previously been studied. A number of short-term exposure studies were also cited by some of these commenters as providing evidence of mortality and morbidity effects at levels well below the level of the current 24-hour $PM_{2.5}$ standard. In addition, many of these commenters generally concluded that progress had been made in reducing many of the uncertainties identified in the last review and in better understanding mechanisms by which $PM_{2.5}$ may be causing the observed health effects.

Some of these commenters also noted the results of EPA's risk assessment, concluding that it showed that the risks estimated to remain when the current standards are met are large and important from a public health perspective and warrant increased protection. Some of these commenters expressed the view that $PM_{2.5}$-related risks are likely larger than those estimated in EPA's risk assessment, in part because EPA based its risk assessment on the ACS extended study which had greater exposure measurement error than other studies, leading to an underestimate of the relative risk, and because EPA incorporated an assumed ''cutpoint'' in its assessment that is not supported by studies that find no evidence of a threshold.

In general, all of these commenters agreed on the importance of results from the large body of scientific studies reviewed in the Criteria Document and on the need to revise the suite of $PM_{2.5}$ standards as articulated in EPA's proposal, while generally differing with EPA's proposed judgments about the extent to which the standards should be revised based on this evidence. The EPA generally agrees with these commenters' conclusion regarding the need to revise the current suite of $PM_{2.5}$ standards. The scientific evidence noted by these commenters was generally the same as that assessed in the Criteria Document and the Staff Paper, and EPA agrees that this evidence provides a basis for concluding that the current $PM_{2.5}$ standards, taken together, are not adequately protective of public health. For reasons discussed below in section II.F, however, EPA disagrees with aspects of these commenters' views on the level of protection that is appropriate and supported by the available scientific information.

Some of these commenters also identified ''new'' studies that were not included in the Criteria Document as providing further support for the need to revise the $PM_{2.5}$ standards. As discussed above in section I.C, EPA notes that, as in past NAAQS reviews, the Agency is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review. Nonetheless, in provisionally evaluating commenters' arguments (see Response to Comments document), EPA notes that its provisional assessment of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

Another group of commenters representing industry associations and businesses opposed revising the current $PM_{2.5}$ standards. These views are most extensively presented in comments from the Utility Air Regulatory Group (UARG), representing a group of electric generating companies and organizations and several national trade associations, and from Pillsbury, Winthrop, Shaw and Pittman (Pillsbury *et al.*) on behalf of 19 industry and business associations (including, for example, the Alliance of Automobile Manufacturers, the American Iron and Steel Institute, the National Association of Manufacturers, the American Petroleum Institute, and the U.S. Chamber of Commerce).

These and other commenters in this group generally mentioned many of the same studies that were cited by the commenters who supported revising the standards, as well as other studies, but highlighted different aspects of these studies in reaching substantially different conclusions about their strength and the extent to which progress has been made in reducing uncertainties in the evidence since the last review. These commenters generally expressed the view that the current standards provide the requisite degree of public health protection. They then considered whether the evidence that has become available since the last review has established a more certain risk or a risk of effects that are significantly different in character to those that provided a basis for the current standards, or whether the evidence demonstrates that the risk to public health upon attainment of the current standards would be greater than

was understood when EPA established the current standards in 1997.

In supporting their view that the present suite of primary $PM_{2.5}$ standards continues to provide the requisite public health protection and should not be revised, UARG and others generally stated: (1) That the effects of concern have not changed significantly since 1997; (2) that the uncertainties in the underlying health science are as great or greater than in 1997; (3) that the estimated risk upon attainment of the current $PM_{2.5}$ standards has decreased since 1997; and (4) that ''new'' studies not included in the Criteria Document continue to increase uncertainty about possible health risks associated with exposure to $PM_{2.5}$. These comments are discussed in turn below.

(1) In asserting that effects of concern have not changed significantly since 1997, some of these commenters stated that more subtle physiological changes in the cardiovascular system are the only type of new PM-related effect identified in this review. They stated that such subtle effects are far less serious than the cardiovascular effects such as aggravation of cardiovascular disease that had been considered in the last review. The EPA disagrees with the assertion that subtle changes in the cardiovascular system are the only type of new PM-related effect identified in this review. Further, EPA believes that evidence of physiological changes in the cardiovascular system is important in that it increases confidence in inferences about the causal nature of the associations between fine particles and cardiovascular-related mortality and hospital admissions.

As discussed in the Criteria Document (EPA, 2004a, p. 9–75), epidemiologic studies published since the last review have expanded upon and extended the evidence examining possible links between long-term exposures to fine particles and increased risk of lung cancer incidence and mortality, which was considered to be insufficient to support such a linkage in the last review. In this review, however, the epidemiologic evidence now available ''support(s) an association between long-term exposure to fine particles and lung cancer mortality; and the new toxicological studies provide credible evidence for the biological plausibility of these associations'' (EPA, 2004a, p. 9–76). More specifically, the Criteria Document highlighted ''the newer results of the extension of the ACS study analyses (that include more years of participant follow-up and address previous criticisms of the earlier ACS analyses), which indicate that long-term ambient PM exposures are associated with increased risk of lung cancer. That increased risk appears to be in about the same range as that seen for a nonsmoker residing with a smoker, with any consequent life-shortening due to lung cancer'' (EPA 2004a, p. 9–94).

In addition, as noted earlier, the Criteria Document identified increased nonhospital medical visits (physician visits) and aggravation of asthma associated with short-term exposure to $PM_{2.5}$ as being newly identified effects since the last review, and concluded that findings of such effects ''suggest likely much larger health impacts and costs to society due to ambient PM than just those indexed either by just hospital admissions/visits and/or mortality.'' *Id.* Further, the Criteria Document (EPA, 2004a, p. 9–79) noted that there may be PM-related health effects in infants and children, although only very limited evidence of such effects exists.

(2) In asserting that the uncertainties in the underlying health science are as great or greater than in 1997, commenters in this group variously discussed a number of issues including: The lack of demonstrated mechanisms by which $PM_{2.5}$ may be causing mortality and morbidity effects; uncertainty in the shape of the concentration-response functions; the potential for co-pollutant confounding; uncertainty in the role of individual constituents of fine particles; and the sensitivity of epidemiological results to statistical model specification. Each of these issues is addressed below. In summary, these commenters concluded that the substantial uncertainties present in the last review have not been resolved, that a previously unrecognized sensitivity to model specification has been newly identified, and/or that the uncertainty about the possible health risks associated with $PM_{2.5}$ exposure has not diminished. As discussed below, although EPA agrees that important uncertainties remain, and that future research directed toward addressing these uncertainties is warranted, EPA believes that overall uncertainty about possible health risks associated with both short- and long-term $PM_{2.5}$ exposure has diminished since the last review. As noted above, the greater confidence in short-term exposure studies supports the Administrator's increased reliance on those studies as the basis for the 24-hour standard, and greater confidence in long-term exposure studies supports the Administrator's increased reliance on those studies as the basis for the annual $PM_{2.5}$.[17]

With regard to the issue of mechanisms, these commenters noted that although EPA recognizes that new evidence is now available on potential mechanisms and plausible biological pathways, the evidence still does not resolve all questions about how $PM_{2.5}$ at ambient levels could produce the effects in question in this review. They further assert that even if more recent information has advanced our understanding of such mechanisms, it would not justify revision of the standard. The EPA notes that in the last review, the Agency considered the lack of demonstrated biologic mechanisms for the varying effects observed in epidemiologic studies to be an important caution in its integrated assessment of the health evidence, upon which the standards were based. Since the last review, there has been a great deal of research directed toward advancing our understanding of biologic mechanisms. While this research has not resolved all questions, and further research is warranted, it has provided important insights as discussed in section II.A.1 of the proposal (71 FR 2626–2627). As noted there, the findings from this new research indicate that different health responses are linked with different particle characteristics and that both individual components and complex particle mixtures appear to be responsible for many biologic responses relevant to fine particle exposures. The Criteria Document (EPA, 2004a, p. 7–206) concluded: ''Thus, there appear to be multiple biologic mechanisms that may be responsible for observed morbidity/mortality due to exposure to ambient PM. It also appears that many biological responses are produced by PM whether it is composed of a single component or a complex mixture.'' Further, EPA believes that progress made in gaining insights into potential mechanisms lends support to the biologic plausibility of results observed in epidemiologic studies (71 FR 2636). The mechanistic evidence now available, taken together with newly available epidemiologic evidence, increases the Agency's confidence that observed associations are causal in nature, such that the risks of health effects attributed to short- and long-term exposure to $PM_{2.5}$, acting alone and/or in combination with gaseous co-pollutants, are now more

[17] As noted above, this increased confidence in the long- and short-term associations generally reflects less uncertainty as to the likely causal nature of such associations, but does not address directly the question of the extent to which such associations remain toward the lower end of the range of ambient $PM_{2.5}$ concentrations. This question is central to the Agency's evaluation of the relevant evidence to determine appropriate standards levels, as discussed below in section II.F.

certain than was understood in the last review.

With regard to uncertainty in concentration-response functions, these commenters concluded that ''because the actual shape of this function remains unknown, this uncertainty has not been reduced since 1997'' (UARG, p. 17). The EPA notes that, in contrast to the last review when few studies had quantitatively assessed the form of the concentration-response function or the potential for a threshold, several new studies available in this review have used different methods to examine this question, and most have been unable to detect threshold levels in time-series mortality studies. The Criteria Document (EPA, 2004a, p. 9–44) recognized that in multi-city and most single-city time-series studies, statistical tests comparing linear and various nonlinear or threshold models have not shown statistically significant distinctions between them; where potential threshold levels have been suggested in single-city studies, they are at fairly low levels (*Id.* at p. 9–45). Further, the shape of concentration-response functions for long-term exposure to $PM_{2.5}$ was evaluated using data from the ACS cohort, with the HEI reanalysis finding near-linear increasing trends through the range of particle levels observed in this study, and the extended ACS study reporting that the various mortality associations were not significantly different from linear (71 FR 2635).[18] However, EPA agrees that uncertainties remain in our understanding of the shape of concentration-response functions, and, consistent with the conclusion in the Criteria Document, has concluded that the available evidence does not either support or refute the existence of population thresholds for effects associated with short- or long-term exposures to PM across the range of concentrations in the studies. Even while recognizing that uncertainties remain, EPA believes that our understanding of this issue for both short- and long-term exposure studies has been advanced since the last review.

With regard to co-pollutant confounding, these commenters asserted that EPA has been ''dismissive'' of this issue in assessing the epidemiologic evidence of associations between PM and mortality and morbidity endpoints (UARG, p. 18). These commenters asserted that EPA has inappropriately concluded that PM-related mortality and morbidity associations are generally robust to confounding, which is one of the criteria considered in drawing inferences about the extent to which observed statistical associations are likely causal in nature. The commenters focused on an examination of the extent to which statistically significant $PM_{2.5}$ associations based on one-pollutant models in a number of time-series studies, and in an analysis of associations with long-term exposures in the ACS cohort studies, often did not remain statistically significant in two-pollutant models.

In general, EPA does not believe that the examination of this issue put forward by these commenters reflects the complexities inherent in assessing the issue of co-pollutant confounding. As discussed in the proposal (71 FR 2634) and more fully in the Criteria Document (EPA, 2004a, section 8.4.3; chapter 9, section 9.2.2.2.2), although multi-pollutant models may be useful tools for assessing whether gaseous co-pollutants may be *potential* confounders, such models cannot determine whether in fact they are. Interpretation of the results of multi-pollutant models is complicated by correlations that often exist among air pollutants, by the fact that some pollutants play a role in the atmospheric reactions that form other pollutants such as secondary fine particles, and by the inherent statistical power of the studies in question. While single-city multi-pollutant models have received a great deal of attention during this review, the Criteria Document also noted several other approaches to examining the question, including a more careful examination of personal exposures to PM and co-pollutants, the use of factor or principal component analyses, and the use of intervention studies (EPA, 2004a, pp. 8–245 to 8–246). The Criteria Document also recognized that it is important to consider the issue of potential co-pollutant confounding in the context of the more recent evidence available about the biological plausibility of associations between the various pollutants and health outcomes, model specification, and exposure error (EPA, 2004a, p. 8–254).

An example of other approaches to examining potential co-pollutant confounding is the study of personal exposure to fine particles and co-pollutant gases done in Baltimore (Sarnat *et al.*, 2001). This study found that day-to-day variations in monitored ambient gases were not associated with day-to-day changes in personal exposures to those gases, but they were associated with day-to-day changes in personal exposure to $PM_{2.5}$. One reasonable interpretation of this study is that for cities like Baltimore, changes in model results when ambient gases are included in multi-pollutant models may stem from such gases being surrogates for exposures to particles and not confounders at all.

The broader examination of this issue in the Criteria Document included a focus on evaluating the stability of the size of the effect estimates in time-series studies using single- and multi-pollutant models, as illustrated in Figures 8–16 through 8–19 (EPA, 2004a, pp. 8–248 to 8–251). This examination found that for most time-series studies, there was little change in effect estimates based on single- and multi-pollutant models, although recognizing that in some cases, the PM effect estimates were markedly reduced in size and lost statistical significance in models that included one or more gaseous pollutants. The Criteria Document also noted that PM and the gaseous co-pollutants were often highly correlated, and it is generally the case that high correlations existed between pollutants where PM effect estimates were reduced in size with the inclusion of gaseous co-pollutants. With regard to the analysis of multiple pollutants from the ACS cohort, it is important to note that the effects estimates for fine particles actually increased in two pollutant models that incorporated CO, NO_2, and ozone, and were reduced only for models that incorporated SO_2. The Criteria Document recognized, however, that SO_2 is a precursor for fine particle sulfates, which complicates the interpretation of multi-pollutant model results, and that mortality may be associated with not only $PM_{2.5}$ but also with other components of the mix of ambient pollutants in this long-term exposure study.

Far from being dismissive, EPA has examined this issue in detail based on the much more extensive body of relevant evidence available in this review. This Criteria Document concluded that ''the most consistent findings from amidst the diversity of multi-pollutant evaluation results for different sites is [sic] that the PM signal most often comes through most clearly.'' (EPA, 2004a, p. 8–254.) While acknowledging that these analyses have not fully disentangled the relative role of co-pollutants, EPA believes that this examination provides greater confidence than in the last review that

[18] In assessing such uncertainties in this review relative to the last review, EPA notes that in the last review the level of uncertainty associated with long-term exposure studies was such that they were not relied on as the primary basis for the annual standard. In the last review, relative risk estimates from long-term exposure studies were deemed ''highly uncertain'' (62 FR 38668) and health effects from long-term exposure were characterized as ''potentially independent'' (*Id.*) from those associated with short-term exposure.

observed effects can be attributed to short- and long-term exposures to $PM_{2.5}$, alone and in combination with other pollutants, while recognizing that potential confounding by co-pollutants remains a very challenging issue to address, even with well-designed studies.

With regard to questions about the role of individual constituents within the mix of fine particles, these commenters pointed out that EPA recognized this issue as an important uncertainty in the last review and did so again in this review. These commenters then expressed the view that such continued uncertainty provides no grounds for reconsidering the Agency's 1997 conclusion that the current $PM_{2.5}$ standards provide the requisite protection. As a general matter, EPA agrees that although new research directed toward this question has been conducted since the last review, important questions remain and the issue remains an important element in the Agency's ongoing research program. The EPA does not agree, however, that continued uncertainty with regard to the relative toxicity of components within the mix of fine particles, in and of itself, provides grounds for not revising the suite of $PM_{2.5}$ standards. Rather, the full body of health effects evidence that has become available since the last review provides a basis for concluding that additional public health protection is warranted to protect against health effects that have been associated with exposure to fine particles measured as $PM_{2.5}$ mass.

At the time of the last review, the Agency determined that it was appropriate to control fine particles as a group, as opposed to singling out any particular component or class of fine particles. This distinction was based largely on epidemiologic evidence of health effects using various indicators of fine particles in a large number of areas that had significant contributions of differing components or sources of fine particles, together with some limited experimental studies that provided some evidence suggestive of health effects associated with high concentrations of numerous fine particle components. In this review, as discussed in section II.D of the proposal (71 FR 2643–2645) and below in section II.C, while most epidemiologic studies continue to be indexed by $PM_{2.5}$, some epidemiologic studies also have continued to implicate various components within the mix of fine particles that have been more commonly studied (*e.g.*, sulfates, nitrates, carbon, organic compounds, and metals) as being associated with adverse effects (EPA, 2004a, p. 9–31, Table 9–3). In addition, several recent epidemiologic studies included in the Criteria Document have used $PM_{2.5}$ speciation data to evaluate associations between mortality and fine particles from different sources, and some toxicologic studies have provided evidence for effects associated with various fine particle components or size-differentiated subsets of fine particles.

The available information continues to suggest that many different chemical components of fine particles and a variety of different types of source categories are all associated with, and probably contribute to, effects associated with $PM_{2.5}$. Consequently, there continues to be no basis to conclude that any individual fine particle component cannot be associated with adverse health effects (EPA, 2005, p. 5–17). This information is relevant to the Agency's decision to retain PM2.5 as the indicator for fine particles (as discussed below in section II.C). The EPA also believes that it is relevant to the Agency's conclusion as to whether revision of the suite of $PM_{2.5}$ standards is appropriate. Furthermore, while there remains uncertainty about the role and relative toxicity of various components of fine PM, the current evidence continues to support the view that fine particles should be addressed as a group for purposes of public health protection, and the remaining uncertainty does not call for delaying any increase in public health protection that other evidence indicates may be warranted.

With regard to the sensitivity of epidemiologic associations to the use of different statistical models and different approaches to model specification used by researchers, these commenters identified this issue of model sensitivity as an area in which uncertainty in interpreting epidemiologic evidence has increased since the last review. Comments from UARG, Pillsbury *et al.*, the Annapolis Center and others pointed to examples where individual study results are sensitive to the use of alternative models, and to reviews that recommend further exploration of this issue in future research, as a basis for asserting that current modeling approaches are too uncertain to use the available epidemiologic studies as a basis for revising the current $PM_{2.5}$ standards. The EPA agrees that recent work on model sensitivity has raised new concerns and the Agency has given much attention to this issue. In so doing, EPA recognizes, as does the HEI and other researchers, that there is no clear consensus at this time as to what constitutes appropriate control of weather and temporal trends in time-series studies, and that no single statistical modeling approach is likely to be most appropriate in all cases (EPA 2004a, p. 8–238).

While recognizing the need for further research on this issue, EPA believes that the body of time-series epidemiologic studies considered in this review [19] provides an appropriate basis for informing the Agency's decisions on whether to revise the 24-hour $PM_{2.5}$ standard, consistent with the conclusion of the HEI review panel (''* * * the revised findings will continue to help inform regulatory decisions regarding PM.'' HEI, 2003; EPA, 2004a, p. 8–237). More specifically, as discussed in the proposal (71 FR 2633–2634), the recent time-series epidemiologic studies evaluated in the Criteria Document have included some degree of control for variations in weather and seasonal variables. However, as summarized in the HEI review panel commentary, selecting a level of control to adjust for time-varying factors, such as temperature, in time-series epidemiologic studies involves a trade-off. For example, if the model does not sufficiently adjust for the relationship between the health outcome and temperature, some effects of temperature could be falsely ascribed to the pollution variable. Conversely, if an overly aggressive approach is used to control for temperature, the result would possibly underestimate the pollution-related effect and compromise the ability to detect a small but true pollution effect (EPA, 2004a, p. 8–236; HEI, 2003, p. 266). The selection of approaches to address such variables depends in part on prior knowledge and judgments made by the investigators, for example, about weather patterns in the study area and expected relationships between weather and other time-varying factors and health outcomes considered in the study.

The HEI commentary also reached several other relevant conclusions about the reanalysis of time-series studies: upon reanalysis, the PM effect persisted in the majority of studies; in some of the large number of studies in which the PM effect persisted, the estimates of PM effects were substantially reduced; in the few studies in which further sensitivity analyses were performed, some showed marked sensitivity of the PM effect estimate to the degree of smoothing and/or the specification of

[19] As discussed in section II.A.2.a of the proposal (71 FR 2629–2630, 2633), this body of studies includes those that did not use generalized additive models or were reanalyzed to address problems with applications of statistical software used in a number of important studies, as noted above in section I.C.

weather; and, in most studies, parametric smoothing approaches used to obtain correct standard errors of the PM effect estimates produced slightly larger standard errors than with the use of generalized additive models. However, the impact of these larger standard errors on the level of statistical significance of the PM effect was minor (EPA, 2004a, pp. 8–237 to 8–238). While recognizing the need for further exploration of alternative modeling approaches for time-series analyses, the Criteria Document found that the studies included in this part of the reanalysis, in general, continued to demonstrate associations between PM and mortality and morbidity beyond those attributable to weather variables alone (EPA, 2004a, pp. 8–340, 8–341).

For long-term exposure to fine particles, the reanalysis and extended analyses of data from prospective cohort studies have shown that reported associations between mortality and long-term exposure to fine particles are robust to alternative modeling strategies (Krewski *et al.*, 2000). As stated in the reanalysis report, ''The risk estimates reported by the Original Investigators were remarkably robust to alternative specifications of the underlying risk models, thereby strengthening confidence in the original findings' (Krewski *et al.*, 2000, p. 232). In the extended analysis, Krewski *et al.* (2000) did identify model sensitivities related to education level and spatial patterns in the data (*e.g.*, correlations in air pollutant concentrations between cities within a region of the country). However, these model sensitivities do not invalidate the findings of statistically significant associations between long-term exposure to $PM_{2.5}$ and mortality. For example, while the association was stronger for the subset of the ACS cohort with the least education, there was an association with cardiorespiratory mortality in the entire population.[20]

In considering these issues related to uncertainties in the underlying health science, on balance, EPA believes that the available evidence interpreted in light of these remaining uncertainties does provide increased confidence relative to the last review in the reported associations between short- and long-term $PM_{2.5}$ exposures and mortality and morbidity effects, alone and in combination with other pollutants, and generally supports stronger inferences as to the causal nature of the associations. The EPA also believes that this increased confidence, when taken in context of the entire body of available health effects evidence and in light of the evidence from short-term exposure studies of associations observed in areas meeting the current suite of $PM_{2.5}$ standards, adds support to its conclusion that the current suite of $PM_{2.5}$ standards needs to be revised to provide increased public health protection. This increased confidence also adds support to the Administrator's decision to place greater reliance on the long-term exposure studies as the basis for the annual $PM_{2.5}$ standard and to place greater reliance on the short-term exposure studies as the basis for the 24-hour $PM_{2.5}$ standard.

(3) In asserting that the estimated risk upon attainment of the current $PM_{2.5}$ standards has decreased since 1997 (UARG, p. 23), these commenters compared results of EPA's risk assessment done in the last review with those from the Agency's risk assessment done as part of this review, and they concluded that risks upon attainment of the current $PM_{2.5}$ standards ''are almost surely far below those that were predicted in 1997'' (UARG, p. 25). These commenters used this conclusion as the basis for a claim that there is no reason to revise the current $PM_{2.5}$ standards. In particular, UARG and other commenters claimed that based on this purported reduction in risk estimates EPA cannot reconcile a decision to provide a greater level of health protection now than that afforded by the current standards with the ''not lower or higher than is necessary'' standard articulated by the Supreme Court in *Whitman*.

The EPA believes that this claim is fundamentally flawed for three reasons, as discussed in turn below: (i) It mischaracterizes the use of the quantitative risk assessment in the 1997 rulemaking; (ii) it is factually incorrect in comparing the quantitative risks estimated in 1997 with those estimated in the current rulemaking; and (iii) it fails to take into account that with similar risks, increased certainty in the risks presented by $PM_{2.5}$ implies greater concern than in the last review.

First, this claim mischaracterizes EPA's use of the risk assessment in 1997 in part by not recognizing that the illustrative risk assessment conducted for portions of two cities (Philadelphia and Los Angeles) in the last review was only used qualitatively to assess the need to revise the then-current PM_{10} standards. The EPA used the 1997 risk assessment estimates to confirm the conclusions drawn primarily from the epidemiological studies that ambient $PM_{2.5}$ levels allowed under the then current PM_{10} standards presented a serious public health problem. EPA did not use it as a basis for selecting the level of the 1997 PM standards. See 62 FR at 38656, 65; *ATA III*, 283 F. 3d at 373–74 (noting that EPA did not base the level of the standards on the numerical results of the risk assessment). In so doing, the Administrator concurred with CASAC's judgment that the quantitative risk estimates at the time were too uncertain for EPA to rely on in deciding the appropriate levels for the $PM_{2.5}$ NAAQS. Therefore, the final decision on the level of the NAAQS was not based on the absolute or relative risk reductions estimated in the quantitative risk assessment. Instead, the decision was based on a direct assessment of the available epidemiological studies and the concentration levels observed in urban areas examined in the studies where statistically significant effects had been observed. Since EPA did not rely on the 1997 quantitative risk estimates in setting the level of the 1997 standards, the 1997 estimates associated with those levels do not represent a decision on a requisite level of quantified risk from PM exposure, and therefore do not support the argument that a lower estimated risk is more than is necessary to provide the requisite level of protection. As a result, the suggested quantitative comparison between the 1997 estimates and the current estimates of risks at the levels of the current standards is not an appropriate basis for determining whether the current suite of $PM_{2.5}$ standards needs to be revised.

Second, EPA relies on the current risk estimates associated with meeting the current standards in a qualitative manner, as in 1997, to inform the conclusions drawn primarily from the epidemiological studies on whether ambient $PM_{2.5}$ levels allowed under the current suite of $PM_{2.5}$ standards present a serious public health problem warranting revision of the suite of $PM_{2.5}$ standards. The 1997 estimate of these risks, or any comparison of the 1997 risk estimates to the current estimates, are irrelevant for that purpose, as the 1997 estimates reflect an outdated analysis that has been updated in this review to reflect the current science.

Further, even if the 1997 and current risk assessments were legitimately comparable for decision-making purposes, it would still be factually

[20] More specifically, in multivariate models, the association found between mortality and long-term $PM_{2.5}$ exposure was little changed with addition of education level to the model (Krewski *et al.*, 2000, p. 184). This indicates that education level was not a confounder in the relationship between fine particles and mortality, but the relationship between fine particles and mortality is larger in the population subsets with lower education in this study and not statistically significant in the population subset with the highest education (EPA, 2004, p. 8–100).

incorrect to conclude that EPA accepted significantly greater risk in 1997 than is now estimated to be associated with the 1997 standards based on the most recent risk assessment. It is important to note that a very large proportion of the quantitative risks estimated in 1997 and today comes from long-term exposure mortality. The primary estimates from the current risk assessment (which assume a potential threshold of 10 μg/m³, as recommended by CASAC) result in residual risks in terms of percent of total incidence that are about the same in the current review as they were in the last review for both Philadelphia and Los Angeles.

Third, it is important to take into account EPA's increased level of confidence in the associations between short- and long-term $PM_{2.5}$ exposures and mortality and morbidity effects. In comparing the scientific understanding of the risk presented by exposure to $PM_{2.5}$ between the last and current reviews, one must examine not only the quantitative estimate of risk from those exposures (*e.g.* the numbers of premature deaths or increased hospital admissions at various levels), but also the degree of confidence that the Agency has that the observed health effects are causally linked to $PM_{2.5}$ exposure at those levels. As documented in the Criteria Document and the recommendations and conclusions of CASAC, EPA recognizes significant advances in our understanding of the health effects of $PM_{2.5}$, based on reanalyses, extended analyses and new epidemiology studies, new human and animal studies documenting effects of concentrated ambient particles, new laboratory studies identifying and investigating biological mechanisms of PM toxicity, and new studies addressing the utility of using ambient monitors to assess population exposures to particles of outdoor origin. As a result of these advances, EPA is now more certain that fine particles, alone or in combination with other pollutants, present a significant risk to public health at levels at or above the range of levels that the Agency had considered for these standards in 1997. From this more comprehensive perspective, since the risks presented by $PM_{2.5}$ are more certain and the overall current quantitative risk estimates are about the same as in 1997, $PM_{2.5}$-related risks are now of greater concern than in the last review.

In sum, quantitative risk estimates were not a basis for EPA's decision in setting a level for the $PM_{2.5}$ standards in 1997, and they do not set any quantified ''benchmark'' for the Agency's decision to revise the $PM_{2.5}$ standards at this time. In any case, there is not a significant difference in the risk estimates from 1997 to now. Finally, EPA believes that confidence in the causal relationships between short- and long-term exposures to fine particles and various health effects has increased markedly since 1997. Therefore, similar or even somewhat lower quantitative risk estimates today would not be a basis to conclude that no revision to the suite of $PM_{2.5}$ standards is ''requisite'' to protect public health with an adequate margin of safety.

(4) Some of these commenters also identified ''new'' studies that were not included in the Criteria Document as showing ''continued erosion of the hypothesis that there is a causal connection between fine PM mass and health effects'' and further supporting ''the conclusion that more stringent $PM_{2.5}$ standards are not justified'' (Pillsbury *et al.*, p. 14). As discussed above in section I.C, EPA notes that, as in past NAAQS reviews, the Agency is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider newly published studies for purposes of decision making in the next PM NAAQS review. Nonetheless, in provisionally evaluating commenters' arguments (see Response to Comments document), EPA notes that its provisional assessment of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

3. Conclusions Regarding the Need for Revision

Having carefully considered the public comments, as discussed above, the Administrator believes the fundamental scientific conclusions on the effects of $PM_{2.5}$ reached in the Criteria Document and Staff Paper, discussed above in section II.B.1, remain valid. In considering whether the suite of primary $PM_{2.5}$ standards should be revised, the Administrator places primary consideration on the evidence obtained from the epidemiologic studies, and finds the evidence of serious health effects reported in short-term exposure studies conducted in areas that would meet the current suite of $PM_{2.5}$ standards to be compelling, especially in light of the extent to which such studies are part of an overall pattern of positive and frequently statistically significant associations across a broad range of studies. The Administrator believes that this literature collectively represents a strong and generally robust body of evidence of serious health effects associated with both short- and long-term exposures to $PM_{2.5}$. Further, the Administrator believes that the increased confidence in the evidence of health effects associated with long-term exposure to $PM_{2.5}$ supports relying on long-term exposure studies as the basis for setting the annual standard in this review. This is in contrast to 1997 when EPA relied primarily on evidence from the then-available short-term exposure studies as the primary basis for setting the annual standard. As discussed in the Criteria Document and Staff Paper, the Administrator believes that much progress has been made since the last review in reducing some of the major uncertainties that were important considerations in establishing the current suite of $PM_{2.5}$ standards.

Extensive critical review of this body of evidence, the quantitative risk assessment, and related uncertainties during the criteria and standards review process, including review by CASAC and the public of the basis for EPA's proposed decision to revise the suite of primary $PM_{2.5}$ standards, has identified a number of issues about which different reviewers disagree and for which additional research is warranted. Nonetheless, on balance, the Administrator believes that the remaining uncertainties in the available evidence do not diminish confidence in the associations between serious mortality and morbidity effects and exposure to fine particles, in particular as reported in peer-reviewed short-term exposure studies at levels allowed by the current standards. In this regard, the Administrator agrees with CASAC and the majority of public commenters that revision of the current suite of $PM_{2.5}$ standards to provide increased public health protection is both appropriate and necessary. Based on these considerations, the Administrator concludes that the current suite of primary $PM_{2.5}$ standards, taken together, is not sufficient and thus not requisite to protect public health with an adequate margin of safety, and that revision is needed to provide increased public health protection.

It is important to note that this conclusion, and the reasoning on which it is based, do not address the question of what specific revisions are appropriate. That requires looking specifically at the current indicator, averaging time, form, and level of the 24-hour and annual $PM_{2.5}$ standards, and evaluating the evidence relevant to determining whether any of those elements should be revised. The analyses discussed above concerning the need to revise the current standards

go no further than determining whether the evidence, taken as a whole, indicates that greater public health protection is needed than that provided by the current suite of $PM_{2.5}$ standards.

C. Indicator for Fine Particles

In 1997, EPA established $PM_{2.5}$ as the indicator for fine particles. In reaching this decision, the Agency first considered whether the indicator should be based on the mass of a size-differentiated sample of fine particles or on one or more components within the mix of fine particles. Second, in establishing a size-based indicator, a size cut needed to be selected that would appropriately distinguish fine particles from particles in the coarse mode.

In addressing the first question in the last review, EPA determined that it was appropriate to control fine particles as a group, as opposed to singling out any particular component or class of fine particles. Community health studies had found significant associations between various indicators of fine particles (including $PM_{2.5}$ or PM_{10} in areas dominated by fine particles) and health effects in a large number of areas that had significant mass contributions of differing components or sources of fine particles, including sulfates, wood smoke, nitrates, secondary organic compounds and acid sulfate aerosols. In addition, a number of animal toxicologic and controlled human exposure studies had reported health effects associations with high concentrations of numerous fine particle components (*e.g.*, sulfates, nitrates, transition metals, organic compounds), although such associations were not consistently observed. It also was not possible to rule out any component within the mix of fine particles as not contributing to the fine particle effects found in epidemiologic studies. For these reasons, EPA concluded that total mass of fine particles was the most appropriate indicator for fine particle standards rather than an indicator based on PM composition (62 FR 38667).

Having selected a size-based indicator for fine particles, the Agency then based its selection of a specific size cut on a number of considerations. In focusing on a size cut within the size range of 1 to 3 μm (*i.e.*, the intermodal range between fine and coarse mode particles), the Agency noted that the available epidemiologic studies of fine particles were based largely on $PM_{2.5}$; only very limited use of PM_1 monitors had been made. While it was recognized that using PM_1 as an indicator of fine particles would exclude the tail of the coarse mode in some locations, in other locations it would miss a portion of the fine PM, especially under high humidity conditions, which would result in falsely low fine PM measurements on days with some of the highest fine PM concentrations. The selection of a 2.5 μm size cut reflected the regulatory importance that was placed on defining an indicator for fine particle standards that would more completely capture fine particles under all conditions likely to be encountered across the U.S., especially when fine particle concentrations are likely to be high, while recognizing that some small coarse particles would also be captured by $PM_{2.5}$ monitoring. Thus, EPA's selection of 2.5 μm as the size cut for the fine particle indicator was based on considerations of consistency with the epidemiologic studies, the regulatory importance of more completely capturing fine particles under all conditions, and the potential for limited intrusion of coarse particles in some areas; it also took into account the general availability of monitoring technology (62 FR 38668).

In this current review, the same considerations continue to apply for selection of an appropriate indicator for fine particles. As an initial matter, the available epidemiologic studies linking mortality and morbidity effects with short- and long-term exposures to fine particles continue to be largely indexed by $PM_{2.5}$. Some epidemiologic studies also have continued to implicate various components within the mix of fine particles that have been more commonly studied (*e.g.*, sulfates, nitrates, carbon, organic compounds, and metals) as being associated with adverse effects (EPA, 2004a p. 9–31, Table 9–3). In addition, several recent studies have used $PM_{2.5}$ speciation data to evaluate the association between mortality and particles from different sources (Schwartz, 2003; Mar *et al.*, 2003; Tsai *et al.*, 2000; EPA, 2004a, section 8.2.2.5). Schwartz (2003) reported statistically significant associations for mortality with factors representing fine particles from traffic and residual oil combustion that were little changed in reanalysis to address statistical modeling issues, and also an association between mortality and coal combustion-related particles that was reduced in size and lost statistical significance in reanalysis. In Phoenix, significant associations were reported between mortality and fine particles from traffic emissions, vegetative burning, and regional sulfate sources that remained unchanged in reanalysis models (Mar *et al.*, 2003).[21] Finally, a small study in three New Jersey cities reported significant associations between mortality and fine particles from industrial, oil burning, motor vehicle and sulfate aerosol sources, though the results were somewhat inconsistent between cities (Tsai *et al.*, 2000).[22] No significant increase in mortality was reported with a source factor representing crustal material in fine particles (EPA, 2004a, p. 8–85). Recognizing that these three studies represent a very preliminary effort to distinguish effects of fine particles from different sources, and that the results are not always consistent across the cities, the Criteria Document found that these studies indicate that exposure to fine particles from combustion sources, but not crustal material, is associated with mortality (EPA, 2004a, p. 8–77). Animal toxicologic and controlled human exposure studies have continued to link a variety of PM components or particle types (*e.g.*, sulfates, notably primary metal sulfate emissions from residual oil burning, metals, organic constituents, bioaerosols, diesel particles) with health effects, though often at high concentrations (EPA, 2004a, section 7.10.2). In addition, some recent studies have suggested that the ultrafine subset of fine particles (generally including particles with a nominal aerodynamic diameter less than 0.1 μm) may also be associated with adverse effects (EPA, 2004a, pp. 8–67 to 8–68).

The Criteria Document recognized that, for a given health response, some fine particle components are likely to be more closely linked with that response than others. The presumption that different PM constituents may have differing biological responses is toxicologically plausible and an important source of uncertainty in interpreting such epidemiologic evidence. For specific effects there may be stronger correlation with individual PM components than with aggregate particle mass. In addition, particles or particle-bound water can act as carriers to deliver other toxic agents into the respiratory tract, suggesting that

[21] Mar *et al.* (2000) noted that sulfate alone in a single-pollutant model was not associated with cardiovascular mortality, but that the sulfate ''factor,'' which was so associated, contained elevated levels of lead and bromine. The authors state that the health association with the sulfate (S) factor ''may be reflective of the contribution of Pb [lead] and Br [bromine] to the S factor.'' Mar *et al.* (2003) did not provide information about single-pollutant analysis of sulfate or about contribution of Pb and Br to the S factor.

[22] More specifically, statistically significant associations were reported with factors representing fine particles from oil burning, industrial and sulfate aerosol sources in Newark and with particles from oil burning and motor vehicle sources in Camden, and no statistically significant associations were reported in Elizabeth.

exposure to particles may elicit effects that are linked with a mixture of components more than with any individual PM component (EPA, 2004a, section 9.2.3.1.3).

Thus, epidemiologic and toxicologic studies have provided evidence for effects associated with various fine particle components or size-differentiated subsets of fine particles. The Criteria Document concluded: ''These studies suggest that many different chemical components of fine particles and a variety of different types of source categories are all associated with, and probably contribute to, mortality, either independently or in combinations'' (EPA, 2004a, p. 9–31). Conversely, the Criteria Document provided no basis to conclude that any individual fine particle component cannot be associated with adverse health effects (EPA, 2005, p. 5–17). In short, there is not sufficient evidence that would lead toward the selection of one or more PM components as being primarily responsible for effects associated with fine particles, nor is there sufficient evidence to suggest that any component should be eliminated from the indicator for fine particles. The Staff Paper continued to recognize the importance of an indicator that not only captures all of the most harmful components of fine particles (i.e., an effective indicator), but also emphasizes control of those constituents or fractions, including sulfates, transition metals, and organics that have been associated with health effects in epidemiologic and/or toxicologic studies, and is thus most likely to result in the largest risk reduction (i.e., an efficient indicator). Taking into account the above considerations, the Staff Paper concluded that it remains appropriate to control fine particles as a group; i.e., that total mass of fine particles is the most appropriate indicator for fine particle standards (EPA, 2005, p. 5–17).

With regard to an appropriate size cut for a size-based indicator of total fine particle mass, the Criteria Document concluded that advances in our understanding of the characteristics of fine particles continue to support the use of particle size as an appropriate basis for distinguishing between these subclasses, and that a nominal size cut of 2.5 μm remains appropriate (EPA, 2004a, p. 9–22). This conclusion followed from a recognition that within the intermodal range of 1 to 3 μm there is no unambiguous definition of an appropriate size cut for the separation of the overlapping fine and coarse particle modes. Within this range, the Staff Paper considered size cuts of both 1 μm and 2.5 μm. Consideration of these two size cuts took into account that there is generally very little mass in this intermodal range, although in some circumstances (e.g., windy, dusty areas) the coarse mode can extend down to and below 1 μm, whereas in other circumstances (e.g., high humidity conditions, usually associated with very high fine particle concentrations) the fine mode can extend up to and above 2.5 μm. The same considerations that led to the selection of 2.5 μm size cut in the last review—that the epidemiologic evidence was largely based on $PM_{2.5}$ and that it was more important from a regulatory perspective to capture fine particles more completely under all conditions likely to be encountered across the U.S. (especially when fine particle concentrations are likely to be high) than to avoid some coarse-mode intrusion into the fine fraction in some areas—led to the same recommendation in the Staff Paper (EPA, 2005, p. 5–18), which was endorsed by CASAC in its recommendations for $PM_{2.5}$ standards (Henderson, 2005a, p. 6). In addition, the Staff Paper recognized that particles can act as carriers of water, oxidative compounds, and other components into the respiratory system, which adds to the importance of ensuring that larger accumulation-mode particles are included in the fine particle size cut (EPA, 2005, p. 5–18).

Consistent with the Staff Paper and CASAC recommendations, the Administrator proposed to retain $PM_{2.5}$ as the indicator for fine particles. Further, the Administrator provisionally concluded that currently available studies do not provide a sufficient basis for supplementing mass-based fine particle standards with standards for any specific fine particle component or subset of fine particles, or for eliminating any individual component or subset of components from fine particle mass standards. Addressing the current uncertainties in the evidence of effects associated with various fine particle components and types of source categories is an important element in EPA's ongoing PM research program.

In so doing, the Administrator also noted that some commenters had expressed views about the importance of evaluating health effect associations with various fine particle components and types of source categories as a basis for focusing ongoing and future research to reduce uncertainties in this area and for considering whether alternative indicator(s) are now or may be appropriate for standards intended to protect against the array of health effects that have been associated with fine particles as indexed by $PM_{2.5}$. Information from such studies could also help inform the development of strategies that emphasize control of specific types of emission sources so as to address particles of greatest concern to public health. While recognizing that the studies evaluated in the Criteria Document provided some limited evidence of such associations that is helping to focus research activities, the Administrator solicited broad public comment on issues related to studies of fine particle components and types of source categories and their usefulness as a basis for consideration of alternative indicator(s) for fine particle standards. In general, comment was solicited on relevant new published research, recommendations for studies that would be appropriate for inclusion in future research activities, and approaches to assessing the available and future research results to determine whether alternative indicators for fine particles are warranted to provide effective protection of public health from effects associated with long- and short-term exposure to ambient fine particles (71 FR at 2645). More specifically, the proposal solicited comment on a number of related issues, including the extent to which reducing particular types of PM (differentiated by either size or chemistry) might alter the size and toxicity of remaining particles; the extent to which fine particles in urban and rural areas can be differentiated by size or chemistry; the extent to which the latest scientific information can be used to improve our understanding of the relationship of monitored pollution levels to human exposure; and on studies using concentrated ambient particles (CAPs) and their use in examining the toxicity of specific mixtures of pollutants or of particular source categories.

The EPA received comparatively few public comments on issues related to the indicator for fine particles.[23] Public comments from all major public and private sector groups received on the proposal were overwhelmingly in favor of EPA's proposal to retain $PM_{2.5}$ as the indicator for fine particles. Commenters who supported retaining $PM_{2.5}$ as an indicator argued that current scientific evidence does not identify specific components or sources of concern and therefore, that a mass-based indicator remains the appropriate indicator for fine particles (Engine Manufacturers Association; American Lung Association *et al.*). Some commenters emphasized the need to conduct additional research to more fully

[23] No public comments were submitted regarding the use of a different size for fine particles.

understand the effect of specific PM components and/or sources on public health. For example, the Electric Power Research Institute highlighted specific new research studies that had been completed since the close of the Criteria Document addressing issues related to fine particle components and source apportionment, and noted its ongoing research on component-related health effects that includes coordinated epidemiology, toxicology, and exposure assessment studies. The Administrator recognizes the work of the Electric Power Research Institute and agrees that additional research is important to improve future understanding of the role of specific fine particle components and/or sources of fine particles. The Administrator also recognizes the ongoing efforts of HEI to conduct additional multidisciplinary research targeted at expanding the available data on the health effects associated with specific PM components (HEI, 2005).

Having considered the public comments on this issue, the Administrator concurs with the Staff Paper and CASAC recommendations and concludes that it is appropriate to retain $PM_{2.5}$ as the indicator for fine particles.

D. Averaging Time of Primary $PM_{2.5}$ Standards

In the last review, EPA established two $PM_{2.5}$ standards, based on annual and 24-hour averaging times, respectively (62 FR 38668–70). This decision was based in part on evidence of health effects related to both short-term (from less than 1 day to up to several days) and long-term (from a year to several years) measures of PM. The EPA noted that the large majority of community epidemiologic studies reported associations based on 24-hour averaging times or on multiple-day averages. Further, EPA noted that a 24-hour standard could also effectively protect against episodes lasting several days, as well as providing some degree of protection from potential effects associated with shorter duration exposures. The EPA also recognized that an annual standard would provide effective protection against both annual and multi-year, cumulative exposures that had been associated with an array of health effects, and that a much longer averaging time would complicate and unnecessarily delay control strategies and attainment decisions. The EPA considered the possibility of seasonal effects, although the very limited available evidence of such effects and the seasonal variability of sources of fine particle emissions across the country did not provide an adequate basis for establishing a seasonal averaging time.

In considering whether the information available in this review supported consideration of different averaging times for $PM_{2.5}$ standards, the Staff Paper concluded that the available information is generally consistent with and supportive of the conclusions reached in the last review to set $PM_{2.5}$ standards with both annual and 24-hour averaging times. In considering the new information, the Staff Paper made the following observations (EPA, 2005, section 5.3.3):

(1) There is a growing body of studies that provide additional evidence of effects associated with exposure periods shorter than 24-hours (e.g., one to several hours) (EPA, 2004a, section 3.5.5.1). While the Staff Paper concluded that this information remains too limited to serve as a basis for establishing a shorter-than-24-hour fine particle primary standard at this time, it also noted that this information gives added weight to the importance of a standard with a 24-hour averaging time.

(2) Some recent PM_{10} studies have used a distributed lag over several days to weeks preceding the health event, although this modeling approach has not been extended to studies of fine particles (EPA, 2004a, section 3.5.5). While such studies continue to suggest consideration of a multiple day averaging time, the Staff Paper noted that limiting 24-hour concentrations of fine particles will also protect against effects found to be associated with PM averaged over many days in health studies. Consistent with the conclusion reached in the last review, the Staff Paper concluded that a multiple-day averaging time would add complexity without providing more effective protection than a 24-hour average.

(3) While some newer studies have investigated seasonal effects (EPA, 2004a, section 3.5.5.3), the Staff Paper concluded that currently available evidence of such effects is still too limited to serve as a basis for considering seasonal standards.

Based on the above considerations, the Staff Paper and CASAC (Henderson, 2005a, p. 6) recommended retaining the current annual and 24-hour averaging times for $PM_{2.5}$ primary standards. The Administrator concurred with the staff and CASAC recommendations and proposed that averaging times for $PM_{2.5}$ standards should continue to include annual and 24-hour averages to protect against health effects associated with short-term (hours to days) and long-term (seasons to years) exposure periods.

The EPA received very limited public comment on the issue of averaging time for the $PM_{2.5}$ primary standards. A group of public health and environmental organizations agreed that ''the EPA has selected the appropriate averaging times for the fine particle standards'' (American Lung Association *et al.*).

Having considered the public comments on this issue, the Administrator concurs with the recommendations presented in the Staff Paper and recommendations made by CASAC (Henderson, 2005a) and concludes, as proposed, that it is appropriate to retain the current annual and 24-hour averaging times for the primary $PM_{2.5}$ standards to protect against health effects associated with short-term and long-term exposure periods.

E. Form of Primary $PM_{2.5}$ Standards

1. 24-Hour $PM_{2.5}$ Standard

In 1997 EPA established the form of the 24-hour $PM_{2.5}$ standard as the 98th percentile of the annual 24-hour concentrations at each population-oriented monitor within an area, averaged over three years (62 FR 38671–74). EPA found that, as compared to an exceedance-based form used in earlier PM standards, a concentration-based form is more reflective of the health risk posed by elevated $PM_{2.5}$ concentrations because it gives proportionally greater weight to days when concentrations are well above the level of the standard than to days when the concentrations are just above the standard. Further, a concentration-based form better compensates for missing data and less-than-every-day monitoring; and, when averaged over 3 years, it has greater stability and, thus, facilitates the development of more stable implementation programs. After considering a range of concentration percentiles from the 95th to the 99th, EPA selected the 98th percentile as an appropriate balance between adequately limiting the occurrence of peak concentrations and providing increased stability and robustness. Further, by basing the form of the standard on concentrations measured at population-oriented monitoring sites (as specified in 40 CFR part 58), EPA intended to provide protection for people residing in or near localized areas of elevated concentrations.

In this review, the Staff Paper concluded that it is appropriate to retain a concentration-based form that is defined in terms of a specific percentile of the distribution of 24-hour $PM_{2.5}$ concentrations at each population-oriented monitor within an area, averaged over 3 years. This staff

recommendation was based on the same reasons that were the basis for EPA's selection of this type of form in the last review. As to the specific percentile value to be considered, the Staff Paper took into consideration (1) the relative risk reduction afforded by alternative forms at the same standard level, (2) the relative year-to-year stability of the air quality statistic to be used as the basis for the form of a standard, and (3) the implications from a public health communication perspective of the extent to which either form allows different numbers of days in a year to be above the level of the standard in areas that attain the standard. Based on these considerations, the Staff Paper recommended either retaining the 98th percentile form or revising it to be based on the 99th percentile form, and noted that primary consideration should be given to the combination of form and level, as compared to looking at the form in isolation (EPA, 2005, p. 5–44).

In considering the information provided in the Staff Paper, most CASAC Panel members favored continued use of the 98th percentile for a concentration-based form because it is more robust than the 99th percentile, such that it would provide more stability to prevent areas from moving in and out of attainment from year to year (Henderson 2005a). In recommending retention of the 98th percentile form, the CASAC Panel recognized that it is the link between the form and level of a standard that determines the degree of public health protection the standard affords.

In considering the available information and the Staff Paper and CASAC recommendations, the Administrator proposed to retain the form for the 24-hour standard. In so doing, the Administrator focused on the relative stability of the 98th and 99th percentile forms as a basis for selecting the 98th percentile form, while recognizing that the degree of public health protection likely to be afforded by a standard is a result of the combination of the form and the level of the standard.

None of the public commenters raised objections to continuing the use of a concentration-based form for the 24-hour standard. Many of the individuals and groups who supported a more stringent 24-hour $PM_{2.5}$ standard noted above in Section II.B, however, recommended a more restrictive concentration-based percentile form, specifically a 99th percentile form. The limited number of these commenters who provided a specific rationale for this recommendation generally expressed their concern that the 98th percentile form could allow too many days where concentrations exceeded the level of the standard, and thus fail to adequately protect public health. The EPA received comparatively few public comments from State and local air pollution control authorities and tribal organizations on the form of the 24-hour $PM_{2.5}$ standard. Of the limited number of state air pollution control authorities that commented on the form of the 24-hour $PM_{2.5}$ standard, all supported retaining the 98th percentile form. Of the limited number of local air pollution control authorities and tribal organizations that commented on the form of the 24-hour $PM_{2.5}$ standard, some supported retaining the 98th percentile form while others supported the 99th percentile form. Beyond their support for retaining the current 24-hour $PM_{2.5}$ standard, which has a 98th percentile form, commenters representing industry associations and businesses provided no specific comments regarding the form of the 24-hour $PM_{2.5}$ standard.

The EPA notes that the viewpoints represented in this review are similar to comments submitted in the last review and through various NAAQS reviews. The EPA recognizes that the selection of the appropriate form includes maintaining adequate protection against peak 24-hour values while also providing a stable target for risk management programs, which serves to provide for the most effective public health protection in the long run.[24] Nothing in the commenters' views has provided a reason to change the Administrator's previous conclusion regarding the appropriate balance represented in the proposed form of the 24-hour $PM_{2.5}$ standard. Therefore, the Administrator concurs with CASAC recommendations and concludes that it is appropriate to retain the 98th percentile form for the 24-hour $PM_{2.5}$ standard.

In reaching this conclusion, EPA also recognizes that several states that otherwise supported EPA's proposal to retain the 98th percentile form of the 24-hour $PM_{2.5}$ standard raised concerns regarding a technical problem associated with a potential bias in the method used to calculate the 98th percentile concentration for this form. NESCAUM, in particular, noted that ''the existing and proposed methodology yields a lower (*i.e.*, less stringent) value on average for a 1 in 3 day frequency sample data-set compared to a daily sample data-set by approximately 1 $\mu g/m^3$'' (NESCAUM, p. 3), and recommended revisions to the methodology such that ''the calculation becomes insensitive to data capture rate or sampling frequency'' (NESCAUM, Attachment A, p.7). Another state commenter suggested the issue could be addressed by ''the addition of language that requires areas that are near the daily NAAQS to continue to use every day FRM/FEM sampling'' (Delaware Department of Natural Resources, p. 4). The EPA agrees with these commenters that the potential bias in calculating the design value of the 24-hour $PM_{2.5}$ standard is a concern. To reduce this bias, EPA had proposed to increase the sampling frequency for monitoring sites that were within 10 percent of the standard to 1 in 3 day sampling (Part 58 section 12(d)(1)). The EPA is persuaded by these comments that it is appropriate to adjust the proposed sampling frequency requirements in order to further reduce this bias. Accordingly, EPA is modifying the final monitoring requirements such that areas that are within 5 percent of the standard will be required to increase the frequency of sampling to every day (Part 58 section 12(d)(1).[25]

2. Annual $PM_{2.5}$ Standard

In 1997 EPA established the form of the annual $PM_{2.5}$ standard as an annual arithmetic mean, averaged over 3 years, from single or multiple community-oriented monitors. This form of the annual standard was intended to represent a relatively stable measure of air quality and to characterize area-wide $PM_{2.5}$ concentrations in conjunction with a 24-hour standard designed to provide adequate protection against localized peak or seasonal $PM_{2.5}$ levels. The current annual $PM_{2.5}$ standard level is to be compared to measurements made at the community-oriented monitoring site recording the highest level, or, if specific constraints are met, measurements from multiple community-oriented monitoring sites may be averaged (Part 50 Appendix N section 1.0(c) and 2.1(a) and (b) and Part 58 Appendix D section 2.8.1.6.1; 62 FR 38672). Community-oriented monitoring sites were specified to be consistent with the intent that a spatially averaged annual standard protect persons living in smaller communities, as well as those in larger population centers. The constraints on allowing the use of spatially averaged measurements were

[24] See *ATA III,* 283 F. 3d at 374–375 which concludes it is legitimate for EPA to consider promotion of overall effectiveness of NAAQS implementation programs, including their overall stability, in setting a standard that is requisite to protect the public health.

[25] See final rulemaking notice regarding revisions to ambient air monitoring requirements, elsewhere in today's **Federal Register**.

intended to limit averaging across poorly correlated or widely disparate air quality values.[26] This approach was judged to be consistent with the short-term epidemiologic studies on which the annual $PM_{2.5}$ standard was primarily based, in which air quality data were generally averaged across multiple monitors in an area or were taken from a single monitor that was selected to represent community-wide exposures, not localized ''hot spots'' (62 FR 38672). These criteria and constraints were intended to ensure that spatial averaging would not result in inequities in the level of protection afforded by the $PM_{2.5}$ standards (*Id.*).

In this review, there now exists a much larger set of $PM_{2.5}$ air quality data than was available in the last review. Consideration in the Staff Paper of the spatial variability across urban areas that is revealed by this new data base has raised questions as to whether an annual standard that allows for spatial averaging, within currently specified or alternative constraints, would provide appropriate public health protection. Analyses in the Staff Paper to assess these questions, as discussed below, took into account both aggregate population risk across an entire urban area and the potential for disproportionate impacts on potentially vulnerable subpopulations within an area.

The effect of allowing the use of spatial averaging on aggregate population risk was considered in sensitivity analyses included in the health risk assessment (EPA, 2005, section 4.4.3.2). In particular, this included analyses of several urban areas that compared estimated mortality risks based on calculating compliance with alternative standards (1) using air quality values from the highest community-oriented monitor in an area and (2) using air quality values averaged across all such monitors within the constraints on spatial averaging allowed by the current standard.[27] As expected, estimated risks associated with long-term exposures that remain upon just meeting the current annual standard are greater when spatial averaging is used than when the highest monitor is used (i.e., the estimated reductions in risk associated with just attaining the current or alternative annual standards are less when spatial averaging is used), as the use of the highest monitor leads to greater modeled reductions in ambient $PM_{2.5}$ concentrations.[28]

In considering the potential for disproportionate impacts on potentially vulnerable subpopulations, EPA assessed whether any such groups are more likely than the general population to live in census tracts in which the monitors recording the highest air quality values in an area are located. Data used in this analysis included demographic parameters measured at the census tract level, including education level, income level, and percent minority population. Data from the census tract in each area in which the highest air quality value was monitored were compared to the area-wide average value (consistent with the constraints on spatial averaging provided by the current standard) in each area (Schmidt *et al.*, 2005). Recognizing the limitations of such cross-sectional analyses, the Staff Paper observed that the results suggest that the highest concentrations in an area tend to be measured at monitors located in areas where the surrounding population is more likely to have lower education and income levels, and higher percentages of minority populations (EPA, 2005, p. 5–41).[29] Noting the intended purposes of the form of the annual standard, as discussed above, the Staff Paper concluded that the existing constraints on spatial averaging may not be adequate to avoid substantially greater exposures in some areas, potentially resulting in disproportionate impacts on these potentially vulnerable subpopulations.

In considering whether more stringent constraints on the use of spatial averaging may be appropriate, the Staff Paper presented results of an analysis of recent air quality data which assessed correlations and differences between monitor pairs in metropolitan areas across the country (Schmidt *et al.*, 2005). For all pairs of $PM_{2.5}$ monitors, the median correlation coefficient based on annual air quality data is approximately 0.9, which is substantially higher than the current criterion (in Appendix D of Part 58, section 2.8.1.6.1) of a minimum correlation of at least 0.6, which was met by nearly all monitor pairs. The current criterion that differences in mean air quality values between individual monitors and the corresponding multi-site spatial average not exceed 20 percent on an annual basis also was met for most monitor pairs, while the actual annual median and mean differences for all monitor pairs were 5 percent and 8 percent, respectively. This analysis also showed that in some areas with highly seasonal air quality patterns (e.g., due to seasonal wood smoke emissions), substantially lower seasonal correlations and larger seasonal differences can occur relative to those observed on an annual basis. This analysis provided some perspective on the constraints on spatial averaging that were adopted in the last review before data were widely available on spatial distributions of $PM_{2.5}$ air quality levels.

In considering the results of the analyses discussed above, the Staff Paper concluded that it is appropriate to consider either eliminating the provision that allows for spatial averaging from the form of an annual $PM_{2.5}$ standard or narrowing the constraints on spatial averaging to be based on more restrictive criteria. More specifically, based on the analyses discussed above, the Staff Paper recommended consideration of revised criteria such that the correlation coefficient between monitor pairs to be averaged be at least 0.9, determined on a seasonal basis, and annual mean differences between individual monitors and corresponding spatial averages not exceed 10 percent (EPA, 2005, p. 5–42).[30]

[26] The current constraints include the criteria that the correlation coefficient between monitor pairs to be averaged be at least 0.6, and that differences in mean air quality values between monitors to be averaged not exceed 20 percent and that areas in which monitoring results may be averaged should principally be affected by the same major emission source of $PM_{2.5}$ (Part 58 App. D section 2.8.1.6.1).

[27] As discussed in the Staff Paper (EPA, 2005; section 4.2.2), the monitored air quality values were used to determine the design value for the annual standard in each area, as applied to a ''composite'' monitor to reflect area-wide exposures. Changing the basis of the annual standard design value from the concentration at the highest monitor to the average concentration across all monitors changes the amount of reduction in $PM_{2.5}$ levels that is needed to just meet the current or alternative annual standards. With averaging, less overall reduction in ambient $PM_{2.5}$ is needed to just meet the standards.

[28] For example, based on analyses conducted in three example urban areas, estimated mortality incidence associated with long-term exposure based on the use of spatial averaging is about 10 to more than 40 percent higher than estimated incidence based on the use of the highest monitor (EPA, 2005, p.5–41).

[29] As summarized in section II.A.4 of the proposal, the Criteria Document notes that some epidemiologic study results, most notably the associations between total mortality and long-term $PM_{2.5}$ exposure in the ACS cohort, have shown larger effect estimates in the cohort subgroup with lower education levels (EPA, 2004a, p. 8–103). The Criteria Document also notes that lower education level can be a marker for lower socioeconomic status that may be related to increased vulnerability to the effects of fine particle exposures, for example, as a result of greater exposure from proximity to sources such as roadways and industry, as well as other factors such as poorer health status and access to health care (EPA, 2004a, section 9.2.4.5).

[30] In CASAC's review of the Second Draft Staff Paper, most of the members of the CASAC Review Panel found the fine particle sections to be ''generally well-written and scientifically well-reasoned'' but, beyond their recommendation that the primary $PM_{2.5}$ standards should be strengthened, CASAC provided no specific

In considering the Staff Paper recommendations based on the results of the analyses discussed above, and focusing on a desire to be consistent with the epidemiologic studies on which the $PM_{2.5}$ health effects are based and concern over the evidence of potential disproportionate impact on potentially vulnerable subpopulations, the Administrator proposed to revise the form of the annual $PM_{2.5}$ standard consistent with the Staff Paper recommendation to change two of the criteria for use of spatial averaging such that the correlation coefficient between monitor pairs must be at least 0.9, determined on a seasonal basis, with differences between monitor values not to exceed 10 percent (71 FR 2647). The Administrator also solicited comment on the other Staff Paper-recommended alternative of revising the form of the annual $PM_{2.5}$ standard to one based on the highest community-oriented monitor in an area, with no allowance for spatial averaging (*Id.* at 2647–48).

Relatively few public comments were received on the form of the annual $PM_{2.5}$ standard. Of the commenters noted above in Section II.B who supported a more stringent annual $PM_{2.5}$ standard, those who commented on the form of the annual $PM_{2.5}$ standard argued that the EPA analyses described above demonstrated that the current form of the standard results in uneven public health protection leading to disproportionate impacts on potentially vulnerable subpopulations, and thus a change in the form of the standard is needed. However, these commenters argued that the proposed modifications to the spatial averaging criteria were not stringent enough and, in order to reduce the possibility of pollution hotspots and disproportionate impacts, especially in areas meeting the annual $PM_{2.5}$ standard, spatial averaging should be eliminated (American Lung Association *et al.*, 2006, pp. 44–47; Schwartz, 2005, p. 2). Of the commenters noted above in Section II.B who supported retaining the current annual $PM_{2.5}$ standard, those who commented specifically on the form of the standard supported retaining the current spatial averaging criteria. These views are most extensively presented in comments from UARG who argued that changes to the spatial averaging criteria, effectively increasing the stringency of the standard, are not needed as the current standards provide the requisite degree of public health protection (UARG, 2006. pp. 33–36). In addition, one state air pollution control agency supported a more stringent level for the annual $PM_{2.5}$ standard in the range recommended by CASAC but also supported retaining the option for spatial averaging for the form of the standard arguing that ''rarely is one monitor representative of an entire nonattainment area'' especially in the western U.S. (Utah Department of Environmental Quality, 2006, p. 2).

The Administrator emphasizes that the intent of the current spatial averaging criteria, as defined in 1997 based on a limited set of $PM_{2.5}$ air quality data, was to ensure that spatial averaging would not result in inequities in the level of protection provided by the $PM_{2.5}$ standards against health effects associated with short- and long-term exposures to $PM_{2.5}$. Based on the analyses described above (Schmidt *et al.*, 2005), which are based on the much larger set of air quality data that has become available since the last review, EPA now believes that tighter constraints on spatial averaging are necessary to address concerns over potential disproportionate impacts on the populations that EPA has identified as being potentially vulnerable to $PM_{2.5}$-related health effects. The EPA believes that current information and analyses indicate that application of the current form has the clear potential to result in disproportionate impacts on potentially vulnerable subpopulations in some areas. The EPA recognizes that the proposed constraints have the potential to increase the stringency of the annual $PM_{2.5}$ standard in some areas in which a State might choose to use spatial averaging. The EPA believes that in such cases this increased stringency is warranted so as to address possible disproportionate impacts on potentially vulnerable populations and more generally to avoid inequities across all population groups. The EPA disagrees with those commenters who support eliminating spatial averaging altogether. The EPA believes that the proposed narrowing of the spatial averaging criteria will adequately address the concerns about disproportionate impact raised by some commenters, as analyzed in the Staff Paper, by substantially reducing the amount of spatial variation in long-term ambient levels that will be allowed to be averaged together in determining compliance with the standard. Therefore, the Administrator concludes that the current form of the standard should be retained with the proposed modifications. The form of the annual $PM_{2.5}$ standard is retained as an annual arithmetic mean, averaged over 3 years; however, the following two aspects of the spatial averaging criteria are narrowed: (1) The annual mean concentration at each site shall be within 10 percent of the spatially averaged annual mean, and (2) the daily values for each monitoring site pair shall yield a correlation coefficient of at least 0.9 for each calendar quarter.

F. Level of Primary $PM_{2.5}$ Standards

In the last review, having concluded that it was appropriate to establish both 24-hour and annual $PM_{2.5}$ standards, EPA selected a level for each standard that was appropriate for the function to be served by each (62 FR 38674, 38676–77). As noted above, EPA concluded at that time that the suite of $PM_{2.5}$ standards could most effectively and efficiently protect public health by treating the annual standard as the generally controlling standard for lowering both short- and long-term $PM_{2.5}$ concentrations.[31] In conjunction with such an annual standard, the 24-hour standard was intended to provide protection against days with high peak $PM_{2.5}$ concentrations, localized ''hotspots,'' and risks arising from seasonal emissions that would not be well controlled by an annual standard.[32]

In selecting the level for the annual standard in the last review, EPA used an evidence-based approach that considered the evidence from both short- and long-term exposure studies. The risk assessment conducted in the last review, while providing qualitative insights about the distribution of risks, was considered by EPA to be too limited to serve as a quantitative basis for decisions on the standard levels. In accordance with Staff Paper and CASAC views on the relative strengths of the short- and long-term exposure studies, EPA placed greater emphasis on the short-term exposure studies. In so doing, EPA first determined a level for the annual standard based on the short-term exposure studies, and then considered whether the long-term exposure studies suggested the need for a lower level. While recognizing that health effects could occur over the full range of concentrations observed in the studies, EPA concluded that the

comments regarding the form of the annual standard (Henderson, 2005a, pp. 1–2).

[31] In so doing, EPA noted that an annual standard would focus control programs on annual average $PM_{2.5}$ concentrations, which would generally control the overall distribution of 24-hour exposure levels, as well as long-term exposure levels, and would also result in fewer and lower 24-hour peak concentrations. Alternatively, a 24-hour standard that focused controls on peak concentrations could also result in lower annual average concentrations. Thus, EPA recognized that either standard could provide some degree of protection from both short- and long-term exposures, with the other standard serving to address situations where the daily peaks and annual averages are not consistently correlated (62 FR 38669).

[32] *See also ATA III,* 283 F.3d at 373 (endorsing this reasoning).

strongest evidence for short-term $PM_{2.5}$ effects occurs for air quality distributions with long-term concentrations near the long-term (e.g., annual) average in those studies reporting statistically significant health effects. Thus, in the last review, EPA selected a level for the annual standard that was somewhat below the lowest long-term average $PM_{2.5}$ concentration in a short-term exposure study that reported statistically significant health effects. Further consideration of the average $PM_{2.5}$ concentrations across the cities in the key long-term exposure studies available at that time did not provide a basis for establishing a lower annual standard level.

In this review, the approach used in the Staff Paper as a basis for staff recommendations on standard levels built upon and broadened the general approach used by EPA in the last review. This broader approach reflected the more extensive and stronger body of evidence now available on health effects related to both short- and long-term exposure to $PM_{2.5}$, together with the availability of much more extensive $PM_{2.5}$ air quality data. This newly available information was used to conduct a more comprehensive risk assessment for $PM_{2.5}$. As a consequence, the broader approach used in the Staff Paper discussed ways to take into account both evidence-based and quantitative risk-based considerations and placed relatively greater emphasis on evidence from long-term exposure studies than was done in the last review.

Given the extensive body of new evidence based specifically on $PM_{2.5}$ that is now available, and the resulting broader approach presented in the Staff Paper, the Administrator considered it appropriate to use a somewhat different evidence-based approach from that used in the last review to propose appropriate standard levels. In the Administrator's view, the very large numbers of $PM_{2.5}$ health effect studies that now make up the available body of evidence provide the most reliable basis for determining the level of the standards. More specifically, EPA's proposal relied on an evidence-based approach that considered the much expanded body of evidence from short-term exposure $PM_{2.5}$ studies as the principal basis for selecting the level of the 24-hour standard, with such standard aimed at protecting against health effects associated with short-term exposures to $PM_{2.5}$. Likewise, the stronger and more robust body of evidence from the long-term exposure $PM_{2.5}$ studies was considered as the principal basis for selecting the level of the annual standard, with such standard aimed at protecting against health effects associated with long-term exposures to $PM_{2.5}$.

With respect to the quantitative risk assessment, the Administrator recognized at proposal that it rests on a more extensive body of data and is more comprehensive in scope than the assessment conducted in the last review, but was mindful that significant uncertainties continue to underlie the resulting risk estimates. Such uncertainties generally relate to a lack of clear understanding of a number of important factors, including, for example, the shape of concentration-response functions, particularly when, as here, effect thresholds can neither be discerned nor determined not to exist; issues related to selection of appropriate statistical models for the analysis of the epidemiologic data; the role of potentially confounding and modifying factors in the concentration-response relationships; issues related to simulating how $PM_{2.5}$ air quality distributions will likely change in any given area upon attaining a particular standard, since strategies to reduce emissions are not yet defined; and whether there would be differential reductions in the many components within $PM_{2.5}$ and, if so, whether this would result in differential reductions in risk. In the case of fine particles, the Administrator recognized that for purposes of developing quantitative risk estimates such uncertainties are likely to amplified by the complexity in the composition of the mix of fine particles generally present in the ambient air. Further, in the Administrator's view, this risk assessment, which is based on studies that do not resolve the issue of a threshold, has important limitations as a basis for standard setting, since if no threshold is assumed the assessment necessarily predicts that ever lower standards result in ever lower risks. This has the effect of masking the increasing uncertainty in the risk estimates that exists as lower levels are considered, even when a range of assumed thresholds is included. As a result, at the time of proposal the Administrator viewed the risk assessment as providing supporting evidence for the conclusion that there is a need to revise the current suite of $PM_{2.5}$ standards, but he judged that it did not provide an appropriate basis to determine what specific quantitative revisions are appropriate.

1. 24-Hour $PM_{2.5}$ Standard

Based on the approach discussed above, the Administrator relied upon evidence from the short-term exposure $PM_{2.5}$ studies as the principal basis for selecting the proposed level of the 24-hour standard. In considering these studies as a basis for the level of a 24-hour standard, and having provisionally selected a 98th percentile form for the standard, the Administrator agreed with the focus in the Staff Paper of looking at the 98th percentile values in these studies. In so doing, the Administrator recognized that these studies provide no evidence of clear effect thresholds or lowest-observed-effects levels. Thus, in focusing on 98th percentile values in these studies, the Administrator was seeking to establish a standard level that will require improvements in air quality generally in areas in which the distribution of daily short-term exposure to $PM_{2.5}$ can reasonably be expected to be associated with serious health effects. Although future air quality improvement strategies in any particular area are not yet defined, most such strategies are likely to move a broad distribution of $PM_{2.5}$ air quality values in an area lower, resulting in reductions in risk associated with exposures to $PM_{2.5}$ levels across a wide range of concentrations.

Based on the information in the Staff Paper and in a supporting staff memorandum,[33] the Administrator observed an overall pattern of statistically significant associations reported in studies of short-term exposure to $PM_{2.5}$ across a wide range of 24-hour average 98th percentile values. More specifically, the Administrator observed a strong predominance of studies with 98th percentile values down to about 39 $\mu g/m^3$ (in Burnett and Goldberg, 2003) reporting statistically significant associations with mortality, hospital admissions, and respiratory symptoms. For example, within this range of air quality, statistically significant associations were reported for mortality in the combined Six Cities study (and three of four individual cities within that study[34]) (Klemm and Mason, 2003), the Canadian 8-City Study (Burnett and Goldberg, 2003), and in studies in Santa Clara County, CA

[33] As discussed in the Staff Paper (EPA, 2005, p. 5–30) and supporting staff memo (Ross and Langstaff, 2005), staff focused on U.S. and Canadian short-term exposure $PM_{2.5}$ studies that had been reanalyzed as appropriate to address statistical modeling issues and considered the extent to which the reported associations are robust to co-pollutant confounding and alternative modeling approaches and are based on relatively reliable air quality data. Additional air quality data used in this analysis were documented in another staff memo (Ross and Langstaff, 2006) that was placed in the docket during the public comment period.

[34] Of the four cities in this study that were within this range of air quality, statistically significant results were reported for Boston, St. Louis, and Knoxville, but not for Steubenville.

(Fairley, 2003) and Philadelphia (Lipfert, 2000); for hospital admissions and emergency department visits in Seattle (Sheppard *et al.*, 2003), Toronto (Burnett *et al.*, 1997; Thurston *et al.*, 1994), Detroit (Ito, 2003, for heart failure [35] and pneumonia, but not for other causes), and Montreal (Delfino *et al.*, 1998,[36] for some but not all age groups and years); and for respiratory symptoms in panel studies in a combined Six Cities study (Schwartz *et al.*, 1994, as reanalyzed in Schwartz and Neas, 2000) and in two Pennsylvania cities (Uniontown in Neas *et al.*, 1995; State College in Neas *et al.*, 1996).[37] Studies in this air quality range that reported positive but not statistically significant associations include mortality studies in Detroit (Ito, 2003), Pittsburgh (Chock *et al.*, 2000), Steubenville (Klemm and Mason, 2003), and Montreal (Goldberg and Burnett, 2003), and a study of lung function in Philadelphia [38] (Neas *et al.*, 1999).

Within the range of 24-hour average 98th percentile $PM_{2.5}$ concentrations of about 35 to 30 μg/m³, the Administrator no longer observed this strong predominance of statistically significant results. Rather, within this range, one study reports statistically significant results (Mar *et al.*, 2003), other studies report mixed results in which some associations reported in the study are statistically significant and others are not (Delfino *et al.*, 1997; Peters *et al.*, 2000),[39] and other studies report associations that are not statistically significant (Ostro, 2003; [40] two individual cities within Klemm and Mason, 2003). Further, the Administrator concluded that the very limited number of studies in which the 98th percentile values are below this range (Stieb *et al.*, 2000; Peters *et al.*, 2001) do not provide a basis for reaching conclusions about associations at such levels. Thus, in the Administrator's view, this body of evidence provided confidence that statistically significant associations are occurring down close to this range, and it provided a clear basis for provisionally concluding that this range represents a range of reasonable values for a 24-hour standard level. The Administrator further noted that focusing on the range of 35 to 30 μg/m³ is consistent with the interpretation of the evidence held by most CASAC Panel members as reflected in their recommendation to select a 24-hour $PM_{2.5}$ standard level within this range (Henderson, 2005a, p. 7). The Administrator recognized, however, the separate point that most CASAC Panel members favored the range of 35 to 30 μg/m³ for the 24-hour $PM_{2.5}$ standard in concert with an annual standard set in the range of 14 to 13 μg/m³ (*Id.*), as discussed in section II.F.2 below.

At proposal, in considering what level would be appropriate for a 24-hour standard, the Administrator was mindful that this choice requires judgment based on an interpretation of the evidence that neither overstates nor understates the strength and limitations of the evidence, or the appropriate inferences to be drawn from the evidence. In the absence of evidence of any clear effects thresholds, EPA may select a specific standard level from within a range of reasonable values. In making this judgment, the Administrator noted that the general uncertainties related to the shape of the concentration-response functions and to the selection of appropriate statistical models affect the likelihood that observed associations are causal down to the lowest concentrations in the studies. Further, and more specifically, the variation in results found in the short-term exposure studies in which the 98th percentile values were below 35 μg/m³ indicated an increase in uncertainty as to whether likely causal associations extend down below this level (71 FR 2649).

In considering the extent to which the quantitative risk assessment should inform EPA's selection of a 24-hour $PM_{2.5}$ standard, the Administrator recognized that risk estimates based on simulating the attainment of standards set at lower levels within this range will inevitably suggest some additional reductions in risk at each lower standard level considered. However, these quantitative risk estimates largely depend upon assumptions made about the lowest level at which reported associations will likely persist and remain causal in nature. Thus, the Administrator was hesitant to use such risk estimates as a basis for proposing a specific standard level, particularly one below 35 μg/m³, and instead preferred to base the decision on level directly on the evidence in the studies themselves (71 FR 2649).

Taking the above considerations into account, the Administrator proposed to set the level of the primary 24-hour $PM_{2.5}$ standard at 35 μg/m³.[41] In the Administrator's judgment at that time, based on the currently available evidence, a standard set at this level would protect public health with an adequate margin of safety from serious health effects, including premature mortality and hospital admissions for cardiorespiratory causes that are likely causally associated with short-term exposure to $PM_{2.5}$. This judgment appropriately considered the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognized that the CAA does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

At the time of proposal, the Administrator recognized that sharply divergent views on the appropriate level of this standard had been presented to EPA as part of the NAAQS review process, and solicited comment on a wide range of standard levels and alternative approaches to characterizing and addressing scientific uncertainties. One such alternative view focused very strongly on the uncertainties inherent in the epidemiologic and toxicologic studies and the quantitative risk assessment as the basis for concluding that no change to the current 24-hour $PM_{2.5}$ standard of 65 μg/m³ was warranted. In sharp contrast, others viewed the epidemiologic evidence and other health studies as strong and robust, and generally placed much weight on the results of the quantitative risk assessment as a basis for concluding that a much stronger policy response is warranted, generally consistent with a standard level at or below 25 μg/m³. As discussed below, the same sharply divergent views were generally repeated in comments on the proposal by the two distinct groups of commenters identified in section II.B.2 above.

In considering comments received on the proposal, the Administrator first notes that CASAC provided additional recommendations concerning the

[35] The proposal incorrectly listed this as an association with ischemic heart disease.

[36] The proposal incorrectly included Delfino *et al.*, 1997 here as well as correctly including it in the next lower air quality range.

[37] Of the studies within this group that evaluated multi-pollutant associations, as discussed above in section II.A.3, the results reported in Fairley (2003), Sheppard (2003), and Ito (2003) were generally robust to inclusion of gaseous co-pollutants.

[38] The proposal incorrectly identified this as a statistically significant association.

[39] For example, Delfino *et al.* (1997) report statistically significant associations between $PM_{2.5}$ and respiratory emergency department visits for elderly people (>64 years old), but not children (<2 years old), in one part of the study period (summer 1993) but not the other (summer 1992). Peters *et al.* (2000) report new findings of associations between fine particles and cardiac arrhythmia, but the Criteria Document observes that the strongest associations were reported for a small subset of the study population that had experienced 10 or more defibrillator discharges (EPA, 2004a, p. 8–164).

[40] The proposal incorrectly identified this as a statistically significant association.

[41] As noted above, the proposed form of the 24-hour standard was the same as the current standard.

proposed PM standards in a letter to the Administrator (Henderson, 2006, p. 2), noting that members of the CASAC PM Panel were generally pleased that the proposed 24-hour $PM_{2.5}$ primary standard was within the range that had previously been recommended by most members. Further, the Panel recognized that the proposed choice of the high end of the recommended range was a policy judgment. A number of commenters, including many States and Tribes, who supported the proposed level generally placed great weight on the recommendation of CASAC.

Many more commenters expressed disagreement with the proposed level. As noted above, these commenters generally fell into two distinct groups that expressed sharply divergent views on their interpretations of the science (in some cases taking into consideration ''new'' science not included in the Criteria Document), on the appropriate policy response based on the science, and on how the quantitative risk assessment should factor into a decision on the standard level.

In interpreting the available scientific information, including consideration of ''new'' science, and advocating a policy response based on the science, one group of commenters focused strongly on the uncertainties they saw in the scientific evidence as a basis for concluding that no change to the current level of the 24-hour $PM_{2.5}$ standard was warranted. This group included virtually all commenters representing industry associations and businesses. In commenting on the proposed level, these commenters most generally relied on the same arguments presented above in section II.B.2 as to why they believed it was inappropriate for EPA to make any revisions to the suite of primary $PM_{2.5}$ standards. That is, they asserted that the health effects of concern associated with short-term exposure to $PM_{2.5}$ have not changed significantly since 1997; that the uncertainties in the underlying time-series epidemiologic studies are as great or greater than in 1997; that the estimated risk upon attainment of the current $PM_{2.5}$ standards is lower now than it was when the $PM_{2.5}$ standards were set in 1997; and that ''new'' science not included in the Criteria Document continues to increase uncertainty about possible health risks associated with exposure to $PM_{2.5}$. These general comments are addressed above in section II.B.2.

In more specific comments, UARG and other commenters in this group called into question EPA's rationale for the proposed level of 35 μg/m³. In so doing, these commenters primarily relied on an examination of this rationale included in an attachment to UARG's comments as the basis for concluding that the available studies do not support EPA's view of the overall pattern of statistically significant associations in studies of short-term exposure to $PM_{2.5}$ across a wide range of 98th percentile $PM_{2.5}$ values. This examination of such studies concluded that there is no consistent pattern of associations at levels up to (and above) the 65 μg/m³ 98th percentile level of the current standard. This examination was based on an individual consultant's ranking of a set of short-term exposure studies by what is characterized as the ''overall significance'' of each study's results. A number of studies were included in this examination that EPA did not include in looking at the pattern of associations.

In considering the approach used in this examination, EPA concludes that the categorical rankings were inappropriately defined in a very restrictive way that overly emphasized certain studies based on selection criteria that favored multi-pollutant models and alternative model specifications, which had the effect of dismissing statistically significant results in some studies. This conclusion reflects EPA's consideration of these issues as presented above in section II.B.2. As noted there, EPA believes in the importance of a comprehensive evaluation that considers and weighs a variety of evidence, including biological plausibility of associations between the various pollutants and health outcomes, and focuses on the stability of the size of the effect estimates in time-series studies using both single- and multi-pollutant models, rather than just looking at statistical significance in a large number of alternative models and using it simplistically to delineate between real and suspect associations. In addition, the examination included several studies that, for a variety of reasons, EPA does not believe are appropriate for such an analysis. The inclusion of such studies, many of which had low statistical power, served to dilute the pattern of associations seen in studies considered by EPA as providing a more appropriate basis for this type of examination.

Further, even if this examination were to be accepted at face value, it still would support a distinction between the patterns of associations above and below the proposed level, in that over half of the cited studies with 98th percentile values above 35 μg/m³ were characterized as being of overall or mixed significance, and more than half of the cited studies with 98th percentile values below 35 μg/m³ were characterized as having no overall significant association. After fully considering this examination of patterns of study results, the Administrator believes that the observations of patterns of study results presented earlier in this section remain valid.[42]

The other group of commenters, including many medical groups, numerous physicians and academic researchers, many public health organizations, some States, and a large number of individual commenters, viewed the epidemiologic evidence and other health studies as strong and robust and expressed the belief that a much stronger policy response is warranted, generally consistent with a standard level at or below 25 μg/m³. Some of these commenters generally expressed the view that the level of the standard should be set below the lowest level observed in any of the studies that report any statistically significant association. Some also expressed the view that important uncertainties inherently present in the evidence warrant a highly precautionary policy response, particularly in view of the serious nature of the health effects at issue, and should be addressed by selecting a standard level that incorporates a large margin of safety.

More specifically, American Lung Association *et al.* and other commenters noted three studies included in the Criteria Document with 98th percentile values below 35 μg/m³, including a mortality study in Phoenix (Mar *et al.*, 2000; reanalyzed in Mar *et al.*, 2003) with a 98th percentile value of 32 μg/m³, a study of emergency department visits in Montreal (Delfino *et al.*, 1997) with a 98th percentile value of 31 μg/m³, and a study of increase in myocardial infarction in Boston (Peters *et al.*, 2001) with a 98th percentile value of 28 μg/m³. Further, these commenters expressed the view that EPA's proposed approach to selecting a level of the 24-hour $PM_{2.5}$ standard is fundamentally flawed because it ''relies unreasonably on point estimates of statistical significance at various concentrations, rather than on trends, and because it completely fails to consider issues of statistical power'' (American Lung Association *et al.*, p. 57). In addition, these commenters found EPA's justification for the proposed level to be ''simply irrational'' in that it ''essentially fabricates uncertainty'' as a basis for avoiding setting a standard that

[42] The EPA's consideration of this examination is discussed more fully in the Response to Comments document.

the evidence ''clearly indicates is necessary'' (*Id.*).

In considering these comments, the Administrator first notes that he generally agrees with CASAC's view that selecting a level within the range of 30 to 35 μg/m³ is a public health policy judgment and that the science does not dictate the selection of any specific level within this range. The Administrator also believes that this policy judgment should take into consideration the important uncertainties that remain in issues that are central to interpreting these types of time-series epidemiologic studies. While the Administrator believes that progress has been made since the last review in addressing key uncertainties, as discussed above in section II.B.2, EPA and the scientific community, including CASAC and the National Research Council (NRC), recognize that important uncertainties remain that warrant further research (*e.g.*, see NRC, 2004). Thus, the Administrator does not agree that the Agency is ''fabricating'' uncertainties that do not exist. More specifically, in considering the studies cited in these comments as a basis for a standard level below 35 μg/m³, the Administrator continues to believe that it is necessary to consider not only the results of these studies and the inherent uncertainties in such studies, but also the pattern of results from other studies with similar air quality values. In so doing, EPA notes that the statistically significant results in Peters *et al.* (2001) were uniquely associated with 1 to 2 hour lag times, but not with 24-hour average $PM_{2.5}$ concentrations, such that it would provide a very tenuous basis for the level of a 24-hour average national standard. While the studies in Phoenix and Montreal do provide some evidence of statistically significant associations within the range of 30 to 35 μg/m³, several other studies within this range of air quality that generally have somewhat greater statistical power and narrower confidence ranges do not provide such evidence. In making the public health policy judgment inherent in selecting a standard level, the Administrator believes that it is necessary to weigh the evidence and related uncertainties against the requirement that the standard is to be neither more nor less stringent than necessary to protect public health with an adequate margin of safety. See *NRDC* v. *EPA*, 902 F. 2d 962, 971 (D.C. Cir. 1990) (in considering level of a NAAQS, EPA is required to take into account all of the relevant studies in the record and rationally determine what weight to give each study); *API* v. *Costle*, 665 F. 2d 1176, 1187 (DC Cir. 1981) (same). In so doing, the Administrator does not agree that this evidence presented by American Lung Association *et al.* warrants a level below 35 μg/m³.

These commenters also identified several ''new'' studies in support of their arguments for a lower level. As noted above, as in past NAAQS reviews, EPA is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review. Nonetheless, in provisionally evaluating commenters' arguments (see Response to Comments document), EPA notes that its provisional assessment of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

With regard to the other studies, EPA notes that neither the Vancouver nor the Atlanta studies found statistically significant associations with $PM_{2.5}$, and that the Atlanta and California studies were conducted in areas with 98th percentile $PM_{2.5}$ values well above the proposed level. Thus, EPA concludes that, taken at face value, these studies would provide no basis for the commenters' claim that they would require a lower standard level than one based on the science included in the Criteria Document.

With regard to considering how the quantitative risk assessment should factor into a decision on the standard level, EPA notes that both groups of commenters generally consider the risk assessment in their comments on the standard level, but they reach diametrically opposed conclusions as to what standard level is supported by the assessment. The general views of both groups on the implications of the risk assessment are presented above in section II.B.2, with one group arguing that it supports a decision not to revise either of the current $PM_{2.5}$ standards, and the other group arguing that it supports a decision to revise both $PM_{2.5}$ standards. More specifically, some of the medical/environmental health commenters consider the magnitude of risk estimated to remain upon meeting the proposed 24-hour standard as a strong reason to select a lower level. These commenters generally assert that the risks are likely even higher than EPA's primary estimates, in part because EPA incorporated a surrogate threshold of 10 μg/m³ even though there is no clear evidence of a threshold in the relevant time-series studies. On the other hand, the industry/business commenters generally assert that the risks are likely lower than EPA's primary estimates, in part because EPA did not base its primary estimates on an assessment that included all statistical model results presented in the studies. Having considered comments based on the quantitative risk assessment from both groups of commenters, the Administrator finds no basis to change the position on the risk assessment that was taken at the time of proposal. That is, as discussed above, while the Administrator recognizes that the risk assessment rests on a more extensive body of data and is more comprehensive in scope than the assessment conducted in the last review, he is mindful that significant uncertainties continue to underlie the resulting quantitative risk estimates. Further, in the Administrator's view, as noted above in this section, this risk assessment, which is based on studies that do not resolve the issue of a threshold, has important limitations as a basis for standard setting in this review, since if no threshold is assumed the assessment necessarily predicts that ever lower standards result in ever lower risks. This has the effect of masking the increasing uncertainty that exists as lower levels are considered, even when a range of assumed thresholds are considered. As a result, the Administrator judges that the quantitative risk assessment does not provide an appropriate basis for selecting the level of the 24-hour $PM_{2.5}$ standard.

After carefully taking the above comments and considerations into account, the Administrator has decided to set the level of the primary 24-hour $PM_{2.5}$ standard at 35 μg/m³. In the Administrator's judgment, based on the currently available evidence, a standard set at this level will protect public health with an adequate margin of safety from serious health effects including premature mortality and hospital admissions for cardiorespiratory causes that are likely causally associated with short-term exposure to $PM_{2.5}$. A standard set at a higher level would not likely result in improvements in air quality in areas across the country in which short-term exposure to $PM_{2.5}$ can reasonably be expected to be associated with serious health effects. A standard set at a lower level would only result in significant further public health protection if, in fact, there is a continuum of health risks down to the lower end of the ranges of air quality observed in the key epidemiologic studies and if the reported associations are, in fact, causally related to $PM_{2.5}$ at

those lower levels. Based on the pattern of results observed in the available evidence, the Administrator is not prepared to make those assumptions. Taking into account the uncertainties that remain in interpreting the available epidemiologic studies, the likelihood of obtaining benefits to public health decreases at lower levels while the likelihood of requiring reductions in ambient concentrations that go beyond those that are needed to reduce risks to public health increases. On balance, the Administrator does not believe that a lower standard is necessary to provide the requisite degree of public health protection. This judgment by the Administrator appropriately considers the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognizes that the CAA does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

2. Annual $PM_{2.5}$ Standard

Based on the approach discussed above at the beginning of section II.F, at the time of proposal the Administrator relied upon evidence from the long-term exposure $PM_{2.5}$ studies as the principal basis for selecting the proposed level of the annual standard. In considering these studies as a basis for the level of an annual standard, the Administrator agreed with the evidence-based focus in the Staff Paper of looking at the long-term mean $PM_{2.5}$ concentrations across the cities included in such long-term studies. In so doing, the Administrator recognized that these studies, like the short-term exposure studies, provide no evidence of clear effect thresholds or lowest-observed-effects levels. Thus, in focusing on the cross-city long-term mean concentrations in these studies, the Administrator was seeking to establish a standard level that will require improvements in air quality in areas in which long-term exposure to $PM_{2.5}$ can reasonably be expected to be associated with serious health effects.

Based on the characterization and assessment of the long-term $PM_{2.5}$ exposure studies presented in the Criteria Document and Staff Paper, in the proposal the Administrator recognized the importance of the validation efforts and reanalyses that have been done since the last review of the original Six Cities and ACS mortality studies. These new assessments provide evidence of generally robust associations and provide a basis for greater confidence in the reported associations than in the last review, for example, in the extent to which they have made progress in understanding the importance of issues related to co-pollutant confounding and the specification of statistical models. Consistent with the information available in the last review, these two key long-term exposure mortality studies reported long-term mean $PM_{2.5}$ concentrations across all the cities included in the studies of 18 and 21 μg/m³, respectively. The Administrator also particularly recognized the importance of the extended ACS mortality study, published since the last review, which provides new evidence of mortality related to lung cancer and further substantiates the statistically significant associations with cardiorespiratory-related mortality observed in the original studies.[43] The Administrator noted that the statistically significant associations reported in the extended ACS study, in a large number of cities across the U.S., provide evidence of effects at a lower long-term mean $PM_{2.5}$ concentration (17.7 μg/m³) than had been observed in the original study, although the relative risk estimates are somewhat smaller in magnitude than those reported in the original study. The assessment in the Criteria Document of these mortality studies, taking into account study design, the strength of the study (in terms of statistical significance and precision of result), and the robustness of results, concluded that it would be appropriate to give the greatest weight to the reanalyses of the Six Cities and ACS studies, and in particular to the results of the extended ACS study (EPA, 2004a, p. 9–33) in weighing the evidence of mortality effects associated with long-term exposure to $PM_{2.5}$. Consistent with that assessment, the Administrator placed greatest weight on these studies as a basis for selecting the proposed level of the annual $PM_{2.5}$ standard.

In addition to these mortality studies, the Administrator also recognized the availability of relevant morbidity studies providing evidence of respiratory morbidity, including decreased lung function growth, in children with long-term exposure to $PM_{2.5}$. Studies conducted in the U.S. and Canada include the 24-Cities study considered in the last review and more recent studies of cohorts of children in southern California, in which the long-term mean $PM_{2.5}$ concentrations in all the cities included in the studies are approximately 14.5 and 15 μg/m³, respectively. As discussed in section II.A. of the proposal (71 FR at 2632), in the 24 Cities study, statistically significant associations were reported between long-term fine particle exposures and lung function measures at a single point in time, whereas positive but generally not statistically significant associations were reported with prevalence of several respiratory conditions. As interpreted in the last review, the results from the 24-Cities study are uncertain as to the extent to which the association extends below a long-term mean $PM_{2.5}$ concentration of approximately 15 μg/m³. The more recent Southern California children's cohort study provides evidence of important respiratory morbidity effects in children, including evidence for a new measure of morbidity, decreased growth in lung function. Reports from this study suggest that long-term $PM_{2.5}$ exposure is associated with decreases in lung function growth, as measured over a four-year follow-up period, although statistically significant associations are not consistently reported. The Administrator recognized that these are important new findings, indicating that long-term $PM_{2.5}$ exposure may be associated with respiratory morbidity in children. However, the Administrator also observed that this is the only study reporting decreased lung function growth, conducted in just one area of the country, such that further study of this health endpoint in other areas of the country would be needed to increase confidence in the reported associations. Thus, the Administrator provisionally concluded that this study provides an uncertain basis for establishing the level of a national standard (*Id.* at 2651).

The Administrator generally agreed that, as discussed in the Staff Paper (EPA, 2005, p. 5–22), it was appropriate to consider a level for an annual $PM_{2.5}$ standard that is below the averages of the long-term $PM_{2.5}$ concentrations across the cities in the key long-term exposure mortality studies, recognizing that the evidence of an association in any such study is strongest at and around the long-term average where the data in the study are most concentrated. The Administrator was mindful that considering what standard is requisite to protect public health with an adequate margin of safety requires public health policy judgments that neither overstate nor understate the strength and limitations of the evidence or the appropriate inferences to be drawn from the evidence. The Administrator provisionally concluded that these key mortality studies, together

[43] In the extended ACS study, significant lung cancer associations were found for those with high school education or less, but not for those with better than a high school education. When data are combined for all education levels, a significant association is found.

with the morbidity studies, provide a basis for considering a standard level no higher than 15 μg/m³. This level is somewhat below the long-term mean concentrations in the key mortality studies and consistent with the interpretation of the evidence from the morbidity studies discussed above. Further, in the Administrator's provisional view, these studies did not provide an appropriate basis for selecting a level lower than the current standard of 15 μg/m³.

In considering the extent to which the quantitative risk assessment can help to inform these judgments with regard to the annual $PM_{2.5}$ standard, the Administrator again recognized that risk estimates based on simulating the attainment of standards set at lower levels, as expected, continue to suggest some additional reductions in risk at the lower standard levels considered in the assessment, and that these estimates largely depend upon assumptions made about the lowest level at which reported associations will likely persist and remain causal in nature. Thus, the Administrator was again hesitant to use such risk estimates as a basis for proposing a lower annual standard level than 15 μg/m³, the level that is based directly on the evidence in the studies themselves, as discussed above.

Taking the above considerations into account, the Administrator proposed to retain the level of the primary annual $PM_{2.5}$ standard at 15 μg/m³. In the Administrator's judgment at that time, based on the currently available evidence, a standard set at this level would be requisite to protect public health with an adequate margin of safety from serious health effects, including premature mortality and respiratory morbidity that are likely causally associated with long-term exposure to $PM_{2.5}$. This judgment by the Administrator appropriately considered the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognized that the CAA does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

At the time of proposal, the Administrator recognized that the CASAC Panel did not endorse retaining the annual standard at the current level of 15 μg/m³ (Henderson, 2005a, p. 7). In weighing the recommendation of the CASAC Panel, the Administrator carefully considered CASAC's stated rationale. In discussing its recommendation (Henderson, 2005a), the CASAC Panel first noted that changes to either the annual or 24-hour $PM_{2.5}$ standard, or both, could be recommended. The Panel then gave three reasons for placing more emphasis on lowering the 24-hour standard than the annual standard: (1) The vast majority of studies indicating effects of short-term $PM_{2.5}$ exposure were carried out in settings in which $PM_{2.5}$ concentrations were largely below the current 24-hour standard level of 65 μg/m³; (2) the amount of evidence on short-term exposure effects, at least as reflected by the number of reported studies, is greater than for long-term exposure effects; and (3) toxicologic findings are largely related to the effects of short-term, rather than long-term, exposures. In not endorsing the option presented in the Staff Paper of retaining the level of the current annual standard in conjunction with lowering the 24-hour standard, the CASAC Panel observed that some cities have relatively high annual $PM_{2.5}$ concentrations without much day-to-day variation and that such cities would only rarely exceed a 24-hour standard, even if it were set at a level below the current standard. In such a city, attaining a 24-hour standard would likely have minimal if any effect on the long-term mean $PM_{2.5}$ concentration and consequently would be less likely to reduce health effects associated with long-term exposures. These observations indicate the desirability of lowering the level of the annual $PM_{2.5}$ standard as well as that of the 24-hour standard, so as to ensure that revisions to the standards achieve appropriate reductions in long-term exposures. Based on these considerations and taking into account the results of the risk assessment, most CASAC Panel members favored setting an annual standard in the range of 14 to 13 μg/m³, along with lowering the 24-hour standard (Henderson, 2005a, p. 7).

In considering these views, the Administrator noted that the appropriateness of setting an annual standard that would lower annual $PM_{2.5}$ concentrations in cities across the country depends upon a policy judgment as to what annual level is required to protect public health with an adequate margin of safety from long-term exposures to $PM_{2.5}$ in light of the available evidence. In considering the evidence of effects associated with long-term $PM_{2.5}$ exposure as a basis for selecting an adequately health protective annual standard, as discussed above, the Administrator provisionally concluded that the evidence did not provide a basis for requiring annual levels below 15 μg/m³. Thus, the Administrator agreed conceptually with the CASAC Panel that any particular 24-hour standard may not result in reductions in the level of long-term exposures to $PM_{2.5}$ in all areas with relatively higher than typical annual $PM_{2.5}$ concentrations and lower than typical ratios of peak-to-mean values (71 FR 2652). Further, the Administrator agreed that this general advice supported relying on the annual standard, and not the 24-hour standard, to achieve the appropriate level of protection from long-term exposures to $PM_{2.5}$. However, the Administrator did not believe that this advice necessarily translated into a reason for setting the annual $PM_{2.5}$ standard at a level below the current level of 15 μg/m³. As discussed above, the Administrator believed that the principal basis for selecting the appropriate level of an annual standard should be the evidence provided by the long-term studies, in conjunction with judgments concerning whether and over what range of concentrations the reported associations are likely causal, without reliance on the risk assessment, and that this evidence reasonably supported retaining the current level of the annual standard (*Id.*).

Reflecting the great importance that EPA places on the advice of CASAC, the Administrator solicited broad public comment on the range of 15 down to 13 μg/m³ the low end of the range recommended by CASAC for the level of the annual $PM_{2.5}$ standard, and on the reasoning that formed the basis for that recommendation. The Administrator recognized that a decision to select a standard in this range below 15 μg/m³ would place greater weight on the strength of the associations reported in the key epidemiologic mortality and morbidity long-term exposure studies down to the lower part of the range of $PM_{2.5}$ concentrations observed across all the cities included in these studies. Such a standard could also reflect greater reliance on the results of the quantitative risk assessment that suggested increased reductions in risk associated with meeting an annual standard at such lower levels (*Id.*).

At the time of proposal, the Administrator also recognized that sharply divergent views on the appropriate level of this standard had been presented to EPA as part of the NAAQS review process, and solicited comments on a wider range of levels, down to 12 μg/m³ on alternative views of the appropriate interpretation of the epidemiologic evidence and related uncertainties, and on relevant research that would improve our understanding of key issues and analytic approaches to

better inform policy judgments in the future. As was the case with the 24-hour $PM_{2.5}$ standard, the same sharply divergent views were again expressed by the two distinct groups of commenters identified above in section II.B.2, as discussed below.

In considering comments received on the proposal, the Administrator first notes that CASAC requested that EPA reconsider its proposed decision on the level of the annual $PM_{2.5}$ standard and set the level within the range that CASAC had previously recommended, 13 to 14 μg/m³ (Henderson, 2006, p. 1).[44] In so doing, CASAC reiterated and elaborated on the scientific basis for its earlier recommendation (Henderson, 2006, pp. 3–4), which included consideration of the Agency's risk assessment (as ''the primary means of determining the effects on risk of changes in the 24-hour and annual $PM_{2.5}$ standards in concert'') as well as the observations that ''a lower daily $PM_{2.5}$ concentration limit alone cannot be relied on to provide protection against the adverse effects of higher annual average concentrations,'' that ''there is evidence that effects of long-term $PM_{2.5}$ concentrations occur at or below the level of the current standard,'' and that ''short-term effects of $PM_{2.5}$ persist in cities with annual $PM_{2.5}$ concentrations below the current standard'' down to approximately 13 μg/m³ (*e.g.*, Burnett and Goldberg, 2003; Mar *et al.*, 2003; and Lipsett *et al.*, 1997). The CASAC concluded:

> In summary, the epidemiologic evidence, supported by emerging mechanistic understanding, indicates adverse effects of $PM_{2.5}$ at current annual average levels below 15 μg/m³. The PM Panel realized the uncertainties involved in setting an appropriate, health-protective level for the annual standard, but noted that the uncertainties would increase rapidly below the level of 13 μg/m³. That is the basis for the PM Panel recommendation of a level at 13–14 μg/m³ (Henderson, 2006, p. 4).

In response to CASAC's request for reconsideration, the Administrator has carefully considered its stated views and the scientific basis for the range it recommended. As an initial matter, the Administrator notes that CASAC's recommendation to lower the level of the annual standard was based in large measure on the results of the Agency's risk assessment, which examined changes in both the 24-hour and annual standard levels in concert. In considering this information qualitatively, as discussed above in section II.B, the Administrator believes that the estimates of risks likely to remain upon attainment of the current suite of $PM_{2.5}$ standards are indicative of risks that can reasonably be judged to be important from a public health perspective, and thus support revision of the current suite of standards. In addressing what revisions to the current suite of $PM_{2.5}$ standards are appropriate, the Administrator has determined that the evidence of health effects associated with short-term exposure to $PM_{2.5}$ is such that it is appropriate to lower the level of the 24-hour $PM_{2.5}$ standard (as discussed in section II.F.1 above). However, as discussed more fully above, the Administrator also believes that this risk assessment has important limitations as a basis for setting a standard level in this review, in part because the available studies do not resolve questions related to potential effect thresholds and because of other important uncertainties noted above in section II.A.3. As a result, the Administrator judges that the quantitative risk assessment does not provide an appropriate basis for selecting the level of either the 24-hour or the annual $PM_{2.5}$ standard. Thus, the Administrator more heavily weighs the implications of the uncertainties associated with the Agency's quantitative risk assessment than CASAC apparently does, and disagrees with CASAC that the risk assessment results appropriately serve as a primary basis for a decision on the level of the annual $PM_{2.5}$ standard.

The CASAC also considered the evidence from specific short-term exposure studies as part of the basis for its recommendation for a lower annual standard level, pointing to studies indicating that effects from short-term exposure of $PM_{2.5}$ persist in cities with annual $PM_{2.5}$ concentrations below the current standard. While the Administrator does not disagree with CASAC's factual statements regarding the findings of the studies of short-term exposure effects, he believes that, based on the evidence available in this review, it is more appropriate to consider the short-term exposure studies as a basis for the level of the 24-hour standard and to consider the long-term exposure studies as a basis for the level of the annual standard. The Administrator recognizes that the Agency used available short-term exposure studies as the primary basis for setting the level of a ''generally controlling'' annual standard in the last review, with the purpose that the annual standard would provide protection against both short-term exposures and long-term exposures, but notes that such a public health policy choice was made primarily because the short-term exposure studies were judged to be the strongest evidence available at that time and the evidence from long-term exposure studies was judged to be too limited to serve as other than a secondary consideration in setting the level of the annual standard. See 62 FR 38675 n. 41 and 38676. In this review, however, the bodies of evidence for both short- and long-term exposures have been substantially extended and strengthened, such that each $PM_{2.5}$ standard can appropriately be evaluated based on the most directly relevant body of scientific studies, and can be focused on providing protection from the health risks evaluated in that body of scientific studies. The Administrator continues to believe, consistent with the evidence-based approach presented in the Staff Paper, that using evidence of effects associated with periods of exposure that are most closely matched to the averaging time of each standard is the most appropriate public health policy approach to evaluating the scientific evidence in selecting the level of each standard, with each standard designed to provide protection from the health risks associated with exposures reflecting that averaging time. Thus, the Administrator believes that the 24-hour standard should be set so as to provide an appropriate degree of protection from health effects associated with short-term exposures to $PM_{2.5}$, and the annual standard should be set so as to provide an appropriate degree of protection from health effects associated with long-term exposures to $PM_{2.5}$. In determining the level of each standard, the Administrator believes it is appropriate to rely on the short-term studies for purposes of determining the level of the 24-hour standard, and the long-term studies for purposes of determining the level of the annual standard.[45] Therefore, the Administrator does not believe that evidence from short-term exposure studies is an appropriate basis for selecting any different level of the annual standard in this review than that selected based on the long-term exposure evidence. The EPA has instead

[44] Two PM Panel members did not agree with the views of the majority, expressing the view that there was an adequate scientific basis to choose an annual $PM_{2.5}$ standard level within the range of 12 to 15 μg/m³ and that the choice of a specific level within that range was a policy decision (Henderson, 2006, p. 6).

[45] This is consistent with the approach taken in the Staff Paper, sections 5.3.4.1 and 5.3.5.1, for evaluating the evidence-based considerations related to setting the standards. The CASAC's letter of June 6, 2005 states that the Second Draft of the Staff Paper was ''Scientifically well-reasoned,'' with the exception of a section not relevant to the fine PM (Henderson, 2005a, pp. 1–2). The CASAC's general view thus includes this evidence-based approach presented in the Staff Paper.

evaluated these short-term exposure studies in the context of determining the appropriate level for the 24-hour standard.

Finally, CASAC also expressed the view that there is evidence that effects of long-term $PM_{2.5}$ concentrations occur at or below the level of the current standard. While the Administrator agrees that any such evidence would be directly relevant to his decision on the level of the annual $PM_{2.5}$ standard, CASAC did not provide any specific information as to what studies it felt provided such evidence nor the considerations that played a role in its interpretation of the studies, including its assessment of the uncertainties inherent in any such studies.[46] As discussed below, the Administrator has considered the available studies of long-term exposure to $PM_{2.5}$, together with the uncertainties inherent in that body of evidence, to reach his final decision on the level of the annual standard. However, since CASAC did not provide any more specific statements as to its assessment of such mortality or morbidity studies, the Administrator cannot determine in what ways his judgments about that evidence may differ from CASAC's views.[47] Lacking such specific statements to support CASAC's view that there is evidence that effects of long-term $PM_{2.5}$ concentrations occur at or below the level of the current standard, the Administrator cannot discern a clear line of scientific reasoning that would preclude the current level of 15 μg/m^3 from being a reasonable policy choice based on the most relevant available evidence on the health effects of long-term exposures to $PM_{2.5}$.

As noted above, EPA received other comments on the proposal from two distinct groups of commenters. One group that included virtually all commenters representing industry associations and businesses agreed with the Agency's proposed decision not to revise the level of the annual $PM_{2.5}$ standard. The other group of commenters included many medical groups, numerous physicians and academic researchers, many public health organizations, many States, and a large number of individual commenters. They strongly disagreed with the Agency's proposed decision and argued that EPA should lower the level of the annual $PM_{2.5}$ standard. While some of these commenters felt that the level should be set within the range recommended by CASAC, most such commenters advocated a level of 12 μg/m^3. These commenters largely based their views on the same general considerations put forward by CASAC as a basis for its recommendation to lower the level of the annual $PM_{2.5}$ standard. To the extent that these commenters, like CASAC, relied upon the Agency's risk assessment or the evidence from short-term exposure studies as a basis for their views, their comments are addressed above. Comments that address how specific long-term $PM_{2.5}$ exposure studies should be considered as a basis for the level of the annual $PM_{2.5}$ standard are addressed below.

A few commenters offered detailed comments on the key long-term exposure $PM_{2.5}$ mortality studies discussed in the proposal, including the original analyses and reanalyses of the ACS and Six Cities cohorts and the extended ACS cohort study. In general, some medical/public health/researcher/State commenters expressed the view that EPA has downplayed the results of these studies to the extent that they provide evidence of effects below the level of the current standard. For example, American Lung Association *et al.* and Schwartz (2006) asserted that the ACS cohort study and the HEI reanalysis provide direct evidence of premature mortality associated with annual exposures below 15 μg/m^3 based on plots of the concentration-response function between long-term exposure to $PM_{2.5}$ and risk of dying across 50 U.S. metropolitan areas that show no substantial deviation from linear, non-threshold relationships down through levels well below 15 μg/m^3. These commenters did not, however, discuss the uncertainties inherent in this type of epidemiologic study or the implications of these uncertainties on their interpretation of the results.

In contrast, some industry/business commenters (*e.g.*, Pillsbury *et al.;* Annapolis Center; UARG) emphasized that uncertainties remain in interpreting these studies with regard to issues such as potential confounding by co-pollutants, especially SO_2, modeling to address spatial correlations in the data, and effect modification by education level or socioeconomic status. In addition, some industry/business commenters raised additional questions about the appropriate interpretation of these key studies in light of other studies, which EPA did not rely on, that provided either mixed or no evidence of $PM_{2.5}$-mortality associations, and in light of their view that the studies that EPA relied on report implausibly large effect estimates.

In considering these commenters' sharply divergent assessments of the key mortality studies, the Administrator continues to believe that these studies provide strong evidence of an association between long-term exposure to $PM_{2.5}$ and mortality. However, the Administrator believes that the remaining uncertainties weigh against reaching the conclusion that the level of the annual $PM_{2.5}$ standard should be lowered on the basis of these studies. In reaching this conclusion, the Administrator notes that even though the long-term average $PM_{2.5}$ concentration across the cities in the extended ACS study (17.7 μg/m^3) is lower than in the original study (21 μg/m^3), the level of the current standard is still appreciably below the long-term average of the extended ACS study and that of the Six Cities study (18 μg/m^3). In commenting on alternative approaches to interpreting the study results as a basis for setting a standard level, American Lung Association *et al.* expressed the view that the level of the standard should more appropriately be based on the concentration that is one standard deviation below the cross-city long-term average in each relevant long-term exposure study. In considering such an approach, the Administrator notes that while that approach would by definition lead to a more precautionary standard, there is no basis for concluding that it is a more scientifically defensible approach or that it is more appropriate in this case where a number of key uncertainties in the evidence remain to be addressed in future research, and where the basic decision is a judgment by the Administrator as to what level is neither more nor less stringent than is necessary to protect public health with an adequate margin of safety. The Administrator continues to believe that it is reasonable to base the decision on the standard level on long-term average $PM_{2.5}$ concentrations in the key long-term exposure studies, because the evidence of an association in any such study is strongest at and around the long-term average where the data in the study are most concentrated (71 FR 2651).

Both groups of commenters also identified several ''new'' mortality studies not included in the Criteria Document in support of their various views. As noted above in Section I.C, as in past NAAQS reviews, EPA is basing

[46] The EPA does not believe that CASAC based this statement on the evidence it cites concerning effects associated with the long-term means of the short-term studies. These studies address effects from short-term exposures, and do not address effects from long-term exposures.

[47] The CASAC did express the view that although the ''new'' scientific literature that was not included in the Criteria Document appears to support its findings, that literature was not needed to support its recommendation of a lower annual standard level (Henderson, 2006, p. 6).

the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review. Nonetheless, in provisionally evaluating commenters' arguments (see Response to Comments document), EPA notes that its provisional assessment of ''new'' science found that such studies did not materially change the conclusions in the Criteria Document.

Some commenters who supported a lower annual standard level also asserted that EPA failed to adequately consider long-term exposure $PM_{2.5}$ morbidity studies, especially studies of effects in children. For example, the Children's Health Protection Advisory Committee and other commenters noted that studies by Razienne *et al.* (1996) and Gauderman *et al.* (2002, 2004) showed effects on children's lung function at long-term cross-city average $PM_{2.5}$ concentrations of 14.5 μg/m^3 and 15 μg/m^3, respectively. The proposal notice included a careful discussion of the 24-Cities study (Razienne *et al.*, 1996) and the earlier Southern California children's health study (Gauderman *et al.*, 2000, 2002), studies which were included in the Criteria Document,[48] and explained the basis for the Administrator's provisional conclusion that these studies provide an uncertain basis for establishing the level of a national standard (71 FR 2651). These commenters offered no information that would change the Administrator's judgment with regard to these studies.[49] In addition, the Children's Health Advisory Committee also cited several studies of ''traffic-related'' pollution (van Vliet *et al.*, 1997; Brunekreef *et al.*, 1997; Kim *et al.*, 2004 [50]) as showing associations between fine particles and adverse respiratory outcomes, including asthma in children who live near major roadways, with mean annual average fine particle concentrations near and below 15 μg/m^3.

In considering these comments, EPA first notes that studies of traffic-related pollution generally do not disentangle potential effects of fine particles from those of other traffic-related pollutants, and thus provide an uncertain basis for establishing the level of a $PM_{2.5}$ standard. Further, two of the studies cited by this commenter are ''new'' studies not included in the Criteria Document. As discussed above in section I.C, EPA is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review.

The CARB and some other commenters who supported a lower annual standard level discussed the rationale used by the CARB in deciding to set the State's annual $PM_{2.5}$ standard at a level of 12 μg/m^3. Some of these commenters also pointed to the World Health Organization's annual $PM_{2.5}$ guideline value of 10 μg/m^3 in support of their view that the scientific evidence supports an annual $PM_{2.5}$ standard in the U.S. at a level no higher than 12 μg/m^3. In considering these comments, the Administrator notes that his decision is constrained by the provision of the CAA that requires that the NAAQS be requisite to protect public health with an adequate margin of safety. This requires that his judgment is to be based on an interpretation of the evidence that neither overstates nor understates the strength and limitations of the evidence, or the appropriate inferences to be drawn from the evidence. This is not the same legal framework that governs the standards set by the State of California or the guidelines established by a working group of scientists within the World Health Organization.[51] Thus, the Administrator does not agree that the California standard or the WHO guideline provide an appropriate basis for setting the level of the annual $PM_{2.5}$ NAAQS in the U.S.

The Administrator further stresses, as explained at proposal, that he is placing the greatest weight in determining the level of the annual standard on the long-term means of the levels associated with mortality effects in the two key long-term studies in the record, the ACS and Six Cities studies (71 FR at 2651). The ACS and Six Cities studies are the two key long-term studies in this review, taking into account both ''study design, strength of the study (in terms of statistical significance and precision of result), and the consistency and robustness of results'' (71 FR 2651), and also the comprehensive reanalyses of these studies, which involved replication, validation, and sensitivity analyses. These reanalyses replicated the original results and confirmed the associations noted in the original studies (EPA 2005, p. 3–17). The Administrator has taken into account all the relevant studies but in evaluating the strengths and weaknesses of the various studies has determined that the greatest weight should be placed on these key studies, as compared to other studies, in determining the level of the annual standard. As discussed above, the level of the current annual standard is appropriate as it is appreciably below the long-term average of these key studies. This standard is also basically at the same level as the long-term average in the two morbidity studies, the 24 Cities study and the Southern California children's cohort study. These morbidity studies provide an uncertain basis for setting the level of the national standard, and, therefore, in the judgment of the Administrator do not warrant setting a lower level for the annual standard than the level warranted based on the key mortality studies.[52]

After carefully taking the above comments and considerations into account, the Administrator has decided to retain the level of the primary annual $PM_{2.5}$ standard at 15 μg/m^3. In the Administrator's judgment, based on the currently available evidence, a standard set at this level would be requisite to protect public health with an adequate margin of safety from serious health effects including premature mortality and respiratory morbidity that are likely causally associated with long-term exposure to $PM_{2.5}$. A standard set at a lower level would only result in significant further public health protection if, in fact, there is a continuum of health risks in areas with long-term average $PM_{2.5}$ concentrations that are well below the cross-city long-term average concentrations observed in

[48] The Gaudermann *et al.* (2004) study cited by these commenters is a ''new'' study, and EPA's provisional consideration of this study is discussed in the Response to Comments document.

[49] The Administrator notes that CASAC's letter of March 21, 2006 did not note any objection to his views on these morbidity studies as discussed in the proposal, or provide any reason to reconsider such views (Henderson, 2006).

[50] Kim *et al.* (2004) is a ''new'' study and EPA's provisional consideration of this study is discussed in the Response to Comments document.

[51] For example, the California statute does not refer to setting a standard that is ''requisite'' to protect, as that term is used in the CAA, and California, unlike EPA, may take economic impacts into consideration in setting air quality standards. In addition, as with the WHO guidelines, the standards appear to be more in the nature of goals as compared to binding requirements that must be met.

[52] The EPA is not required to base the level of the standard on either the highest or lowest level from any one study. Rather, the Administrator must ''make an informed judgment based on available evidence.'' *American Petroleum Inst* v. *Costle*, 665 F. 2d at 1187; *NRDC* v. *EPA*, 902 F. 2d at 971. Such an informed judgment can result in higher levels than shown in some of the studies in the record. See, e.g. *NRDC* v. *EPA*, 902 F. 2d at 971 (upholding 1987 PM_{10} annual standard selected from ''near the middle of the 'range of interest' ''); *API* v. *Costle*, 665 F. 2d at 1187 (upholding 1979 hourly standard for ozone selected at level higher than a number of studies in the record).

the key epidemiologic studies and if the reported associations are, in fact, causally related to $PM_{2.5}$ at those lower levels. Based on the available evidence, the Administrator is not prepared to make these assumptions. As was the case in considering the 24-hour $PM_{2.5}$ standard, taking into account the uncertainties that remain in interpreting the available long-term exposure epidemiologic studies, the likelihood of obtaining benefits to public health decreases with a standard set below the current level, while the likelihood of requiring reductions in ambient concentrations that go beyond those that are needed to reduce risks to public health increases. On balance, the Administrator does not believe that a lower standard is needed to protect public health with an adequate margin of safety. This judgment by the Administrator appropriately considers the requirement for a standard that is neither more nor less stringent than necessary for this purpose and recognizes that the CAA does not require that primary standards be set at a zero-risk level, but rather at a level that reduces risk sufficiently so as to protect public health with an adequate margin of safety.

G. Final Decisions on Primary $PM_{2.5}$ Standards

For the reasons discussed above, and taking into account the information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of CASAC, including its request to reconsider parts of the proposal, and public comments received on the proposal, the Administrator is revising the current primary $PM_{2.5}$ standards. The suite of standards as revised will provide increased protection from the health risks associated with exposure to $PM_{2.5}$, and in the judgment of the Administrator will be requisite to protect public health with an adequate margin of safety.

Specifically, the Administrator is making the following revisions:

(1) The level of the primary 24-hour $PM_{2.5}$ standard is revised to 35 $\mu g/m^3$.

(2) The form of the primary annual $PM_{2.5}$ standard is revised with regard to the criteria for spatial averaging, such that averaging across monitoring sites is allowed if the annual mean concentration at each monitoring site is within 10 percent of the spatially averaged annual mean, and the daily values for each monitoring site pair yield a correlation coefficient of at least 0.9 for each calendar quarter. Data handling conventions for the revised standards are specified in revisions to Appendix N, as discussed below in section V, and minor revisions to the reference method for monitoring PM as $PM_{2.5}$ are specified in Appendix L, as discussed below in section VI.

In a related rule on ambient air monitoring regulations (40 CFR Parts 53 and 58) published elsewhere in today's **Federal Register**, EPA is revising the requirements for reference and equivalent method determinations for fine particle monitors, monitoring network descriptions and periodic assessments, quality assurance, and data certification.

Issues related to the implementation of revised $PM_{2.5}$ standards are discussed below in section VII. The EPA plans to propose related revisions to the Air Quality Index for $PM_{2.5}$ at a later date.

III. Rationale for Final Decisions on Primary PM_{10} Standards

A. Introduction

1. Overview

This section presents the Administrator's final decisions on the review of the primary NAAQS for PM_{10}. The rationale for the final decisions on the primary PM_{10} NAAQS includes consideration of: (1) Evidence of health effects related to short- and long-term exposures to thoracic coarse particles; (2) insights gained from a quantitative risk assessment prepared by EPA; and (3) specific conclusions regarding the need for revisions to the current standards and the elements of standards for thoracic coarse particles (*i.e.*, indicator, averaging time, form, and level) that, taken together, would be requisite to protect public health with an adequate margin of safety.

In developing this rationale, EPA has taken into account the information available from a growing, but still limited, body of evidence on health effects associated with thoracic coarse particles from studies that use $PM_{10-2.5}$ as a measure of thoracic coarse particles. The EPA has drawn upon an integrative synthesis of the body of evidence on associations between exposure to ambient thoracic coarse particles and a range of health endpoints (EPA, 2004a, Chapter 9), focusing on those health endpoints for which the Criteria Document concludes that the associations are suggestive of possible causal relationships. In its policy assessment of the evidence judged to be most relevant to making decisions on elements of the standards, EPA has placed greater weight on U.S. and Canadian epidemiologic studies using thoracic coarse particle measurements, since studies conducted in other countries may well reflect different demographic and air pollution characteristics.

While there is little question that particles in the thoracic coarse particle size range can present a risk of adverse effects to the most sensitive regions of the respiratory tract at sufficient exposure levels, the characterization of health effects attributable to various levels of exposure to ambient thoracic coarse particles is subject to uncertainties that are markedly greater than is the case for fine particles. As summarized below, however, there is a growing body of evidence available since the last review of the PM NAAQS, with important new information coming from epidemiologic, toxicologic, and dosimetric studies. Moreover, the newly available research studies have undergone intensive scrutiny through multiple layers of peer review and extended opportunities for public review and comment. While important uncertainties remain, the review of the health effects information has been extensive and deliberate. In the judgment of the Administrator, this intensive evaluation of the scientific evidence provides an adequate basis for making final regulatory decisions at this time.

In addition, this review has already provided important input to EPA's research and monitoring plans for improving our future understanding of the relationships between exposures to ambient thoracic coarse particles and health effects. As discussed in the proposal, the epidemiological evidence available in this review is almost entirely based on measurements of undifferentiated $PM_{10-2.5}$ mass, without regard to the composition of thoracic coarse particles. Yet both fundamental toxicological considerations and the limited data available on this issue strongly suggest that the health effects could vary significantly depending upon the composition of the ambient coarse particle mix. The goal of the Agency's research and monitoring programs going forward is to provide scientific advances that will enable future PM NAAQS reviews to make more informed decisions that will provide more effective and efficient protection against the effects of those coarse particles and related source emissions that prove to be of concern to public health.

The health effects information and human risk assessment were summarized in sections III.A and III.B of the proposal and are only briefly outlined in subsections III.A.2 and 3 below. Subsequent sections provide a more complete discussion of the Administrator's rationale, in light of key

issues raised in public comments, for his decision to retain the current 24-hour primary PM_{10} standard and to revoke the current annual PM_{10} standard. Specifically, these sections present a more complete discussion of the Administrator's rationale regarding the need to maintain protection against the health effects of coarse particles (section III.B) as well as the rationale for the decisions regarding specific elements of the primary PM_{10} standards including indicator (section III.C); and averaging time, level and form (section III.D).

2. Overview of Health Effects Evidence

The first PM NAAQS (36 FR 8186) used an indicator based solely on a preexisting monitor for total suspended particles (TSP) that was not designed to focus on particles of greatest risk to health. In preparing for the initial review of those standards, EPA placed a major emphasis on developing a new indicator that considered the significant amount of evidence on particle size, composition, and relative risk of effects from penetration and deposition to the major regions of the respiratory tract (Miller *et al.*, 1979). The development and assessment of these lines of evidence in the PM Criteria Document and PM Staff Paper published between 1979 and 1986 culminated in revised standards for PM that used PM_{10} as the indicator (52 FR 24634). The major conclusion from that review, which remained unchanged in the 1997 review, was that ambient particles smaller than or equal to 10 µm in aerodynamic diameter are capable of penetrating to the deeper ''thoracic'' [53] regions of the respiratory tract and present the greatest concern to health (61 FR 65648). While considerable advances have been made, the available evidence in this review continues to support the basic conclusions reached in the 1987 and 1997 reviews regarding penetration and deposition of fine and thoracic coarse particles. As discussed in the Criteria Document, both fine and thoracic coarse particles penetrate to and deposit in the alveolar and tracheobronchial regions. For a range of typical ambient size distributions, the total deposition of thoracic coarse particles to the alveolar region can be comparable to or even larger than that for fine particles. For areas with appreciable coarse particle concentrations, thoracic coarse particles would tend to dominate particle deposition to the tracheobronchial region for mouth breathers (EPA, 2004a, p. 6–16). Deposition of particles to the tracheobronchial region is of particular concern with respect to aggravation of asthma.

In the last review, little new toxicologic evidence was available on potential effects of thoracic coarse particles and there were few epidemiologic studies that had included direct measurements of thoracic coarse particles. Evidence of associations between health outcomes and PM_{10} that were conducted in areas where PM_{10} was predominantly composed of thoracic coarse particles was an important part of EPA's basis for reaching conclusions about the requisite level of protection from coarse particles provided by the final standards. The new studies available in this review include epidemiologic studies that have reported associations with health effects using direct measurements of $PM_{10-2.5}$, as well as new dosimetric and toxicologic studies.

Section III.A of the proposal further outlines key information contained in the Criteria Document (Chapters 6–9) and the Staff Paper (Chapter 3) on known or potential effects associated with exposure to thoracic coarse particles and their major constituents. The information highlighted there includes:

(1) New information available on potential mechanisms for health effects associated with exposure to thoracic coarse particles or their constituents.

(2) The nature of the effects that have been associated with short-term exposures to ambient thoracic coarse particles, particularly in urban and industrial settings, including aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions), increased respiratory symptoms in children, and premature mortality.

(3) An integrative assessment of the evidence on health effects related to thoracic coarse particles, with an emphasis on the key issues raised in assessing the available community-based epidemiologic studies, including alternative interpretations of the evidence, both for individual studies and the evidence as a whole.

(4) Subpopulations that appear to be sensitive to effects from exposure to thoracic coarse particles, specifically including individuals with preexisting lung diseases such as asthma, and children and older adults.

(5) Conclusions, based on the magnitude of these subpopulations and risks identified in health studies conducted in urban and industrial areas, that exposure to ambient thoracic coarse particles can have an important public health impact.

The summary of the health effects evidence related to ambient coarse particles in the proposal will not be repeated here. The EPA emphasizes that the final decisions on these standards take into account the more comprehensive and detailed discussions of the scientific information on these issues contained in the Criteria Document and Staff Paper, which were reviewed by the CASAC and the public. For reasons summarized in section I.C above, EPA is not relying on studies published after completion of the Criteria Document as a basis for reaching final decisions on these standards.

3. Overview of Quantitative Risk Assessment

The general overview and discussion of key components of the risk assessment used to develop risk estimates for $PM_{2.5}$ presented in section II.A above is also applicable to the assessment done for $PM_{10-2.5}$ in this review. However, the scope of the risk assessment for $PM_{10-2.5}$ is much more limited than that for $PM_{2.5}$, reflecting the much more limited body of epidemiologic evidence and air quality information available for $PM_{10-2.5}$. As discussed in chapter 4 of the Staff Paper, the $PM_{10-2.5}$ risk assessment includes risk estimates for just three urban areas for two categories of health endpoints related to short-term exposure to $PM_{10-2.5}$: hospital admissions for cardiovascular and respiratory causes, and respiratory symptoms.

Estimates of hospital admissions attributable to short-term exposure to $PM_{10-2.5}$ have been developed for Detroit (cardiovascular and respiratory admissions) and Seattle (respiratory admissions), and estimates of respiratory symptoms have been developed for St. Louis.[54] While one of the goals of the $PM_{10-2.5}$ risk assessment was to provide estimates of the risk reductions associated with just meeting alternative $PM_{10-2.5}$ standards, the nature and magnitude of the uncertainties and concerns associated with this portion of the risk assessment weigh against use of these risk estimates as a basis for recommending specific standard levels (EPA, 2005, p. 5–69).

[53] The ''thoracic'' regions of the respiratory tract are located in the chest (thorax) and are comprised of the tracheo-bronchial region with connecting airways and the alveolar, or gas-exchange region of the lung. For ease of communication, ''thoracic'' particles penetrating to these regions are often called ''inhalable'' particles.

[54] Quantitative risk estimates associated with recent air quality levels for these three cities are presented in Figures 4–11 and 4–12 of the Staff Paper.

These uncertainties and concerns are summarized in section III.B of the proposal and discussed more fully in the Staff Paper (Chapter 4) and the technical support document (Abt Associates, 2005).

B. Need for Revision of the Current Primary PM_{10} Standards

As presented in the proposal, taking into account both the nature of recent scientific evidence and legal considerations, this review of the primary PM_{10} standards has focused on whether to revise the indicator for thoracic coarse particles, and on the appropriate level, form and averaging time for any revised indicator. The basis for reaching a final decision on the indicator, as well as other facets of the standards, is presented below in sections III.C and III.D. This section provides an overview of the considerations that led to the Administrator's provisional conclusion, at the time of proposal, that it would be appropriate to revise the PM_{10} standards by adopting a new indicator ($PM_{10-2.5}$).[55] The section then presents a summary of public comments concerning whether the available evidence supports retention, revision, or revocation of standards to protect against exposure to thoracic coarse particles. For the reasons discussed below, the Administrator has concluded, consistent with CASAC and Staff Paper recommendations and conclusions drawn at the time of proposal, that continued protection against health effects associated with short-term exposure to thoracic coarse particles is requisite. However, EPA notes that, having considered the issues raised in extensive public comment on the proposal, the Administrator's final decision differs from that in the proposal regarding whether it is appropriate to revise the indicator in order to retain protection from coarse particles. This section, and the subsequent section on indicator, outline the rationale presented at the time of the proposal, and then describe how the Administrator has reached a different conclusion in his final decision.

1. Overview of the Proposal

The initial issue addressed in the current review of the primary PM_{10} standards was whether, in view of the advances in scientific knowledge reflected in the Criteria Document and Staff Paper, the current standards should be revised. The Staff Paper addressed this question by first considering the conclusions reached in the last review, the subsequent litigation of that decision, and the nature of the new information available in this review.

In 1997, in conjunction with establishing new $PM_{2.5}$ standards, EPA concluded that continued protection against potential effects associated with thoracic coarse particles in the size range of 2.5 to 10 μm was warranted based on particle dosimetry, toxicologic information, and limited epidemiologic evidence from studies that measured PM_{10} in areas where coarse particles were likely to dominate the distribution (62 FR 38677). This information indicated that thoracic coarse particles can deposit in those regions of the lung of most concern (*i.e.*, the tracheobronchial and alveolar regions, which together make up the thoracic region),[56] and that they can be expected to aggravate effects in individuals with asthma and contribute to increased upper respiratory illness (62 FR 38666–8).

Further, EPA decided that the new function of PM_{10} standard(s) would be to provide such protection against effects associated with particles in the narrower size range between 2.5 to 10 μm. Although some consideration had been given to a more narrowly defined indicator that did not include fine particles (*e.g.*, $PM_{10-2.5}$), EPA decided that it was more appropriate to continue to use PM_{10} as the indicator for standards to control thoracic coarse particles. This decision was based in part on the recognition that the only studies of clear quantitative relevance to health effects most likely associated with thoracic coarse particles used PM_{10} in areas where the coarse fraction was the dominant fraction of PM_{10}, namely two studies conducted in areas that substantially exceeded the 24-hour PM_{10} standard (62 FR 38679). The decision also reflected the fact that there were only very limited ambient air quality data then available specifically on thoracic coarse particles (*i.e.* $PM_{10-2.5}$), in contrast to the extensive monitoring network already in place for PM_{10}. In essence, EPA concluded at that time that it was appropriate to continue to control thoracic coarse particles, but that the only information available upon which to base such standards was indexed in terms of PM_{10}.

In subsequent litigation regarding the 1997 PM NAAQS revisions, however, the U.S. Court of Appeals (D.C. Circuit) held in part that EPA had not provided a reasonable explanation justifying use of PM_{10} as an indicator for thoracic coarse particles. *ATA I*, 175 F.3d at 1054–55. Although the court found ''ample support'' (*id.* at 1054) for EPA's decision to regulate thoracic coarse particles, it vacated the 1997 revised PM_{10} standards. The result of subsequent EPA actions, discussed above in section I.C, is that the 1987 PM_{10} standards remain in place (65 FR 80776, 80777, Dec. 22, 2000) and the present review is consequently of those 1987 standards.

In this review, the Staff Paper focused on the recent information available in the Criteria Document from a growing, but still limited, body of evidence on health effects associated with thoracic coarse particles from studies that use $PM_{10-2.5}$ as the measure of thoracic coarse particles. In addition, there is now much more information available to characterize air quality in terms of $PM_{10-2.5}$ than was available in the last review. In considering this information, the Staff Paper found that the major considerations that formed the basis for EPA's 1997 decision to retain PM_{10} as the indicator for thoracic coarse particles, rather than a more narrowly defined indicator that does not include fine particles, no longer apply. More specifically, staff concluded that the continued use of PM_{10} as an indicator for standards intended to protect against health effects associated with thoracic coarse particles was no longer necessary since the information available in the Criteria Document could support the use of a more directly relevant indicator, $PM_{10-2.5}$. Further, staff concluded that continuing to rely principally on health effects evidence indexed by PM_{10} to determine the appropriate averaging time, form, and level of a standard was no longer necessary or appropriate since a number of more directly relevant studies, indexed by $PM_{10-2.5}$, were available. Thus, the Staff Paper concluded that it was appropriate to revise the current PM_{10} standards in part by revising the indicator for thoracic coarse particles, and by basing any such revised standard principally on the currently available evidence and air quality information indexed by $PM_{10-2.5}$, but also considering evidence from studies using PM_{10} in locations where $PM_{10-2.5}$ was the predominant fraction (EPA, 2005, section 5.4.1). As noted in the introduction to this section,

[55] The Administrator also proposed qualifications to the indicator, and corresponding revisions to the level and form of the 24-hour standard to provide protection that is generally equivalent to that afforded by the PM_{10} standard, and to revoke the annual PM_{10} standard.

[56] EPA further concluded at that time that the risks of adverse health effects associated with deposition of particles in the thoracic region are ''markedly greater than for deposition in the extrathoracic (head) region,'' and that risks from extrathoracic deposition are ''sufficiently low that particles which deposit only in that region can safely be excluded from the standard indicator'' (62 FR 38666).

having considered public comments on this issue, EPA has reached different conclusions regarding the appropriateness of revising the current indicator in this final decision; this is described in more detail below in section III.C.

Recognizing that dosimetric evidence formed the basis for the initial establishment of the PM_{10} indicator in 1987 and supported the decision in 1997 to retain the PM_{10} indicator, the Staff Paper also considered whether currently available dosimetric evidence continues to support the basic conclusions reached in those reviews of the standards. In particular, consideration was given to available information about patterns of penetration and deposition of thoracic coarse particles in the sensitive thoracic region of the lung and to whether an aerodynamic size of 10 μm remains a reasonable separation point for particles that penetrate and potentially deposit in the thoracic regions. The Staff Paper concluded that while considerable advances have been made in understanding particle dosimetry, the available evidence continues to support those basic conclusions from past reviews. More specifically, both fine particles, indexed by $PM_{2.5}$, and thoracic coarse particles, indexed by $PM_{10-2.5}$, penetrate to and deposit in the thoracic regions. Further, for a range of typical ambient size distributions, the total deposition of thoracic coarse particles to the alveolar region can be comparable to or even larger than that of fine particles (EPA, 2004a, p. 6–16).

Beyond the dosimetric evidence, as noted in past reviews (EPA, 1982, 1996b), toxicologic studies show that the deposition of a variety of particle types in the tracheobronchial region, including resuspended urban dust and coarse-fraction organic materials, has the potential to affect lung function and aggravate respiratory symptoms, especially in asthmatics. Of particular note are limited toxicologic studies that found urban road dust can produce cellular and immunological effects (*e.g.*, Kleinman *et al.*, 1995; Steerenberg *et al.*, 2003).[57] In addition, some very limited *in vitro* toxicologic studies show some evidence that coarse particles may elicit pro-inflammatory effects (EPA, 2004a, section 7.4.4). Further, the Staff Paper assessment of the physicochemical properties and occurrence of ambient coarse particles suggests that both the chemical makeup and the spatial distribution of coarse particles are likely to be more heterogeneous than for fine particles (EPA, 2005, chapter 2). In particular, as discussed below in section III.C, coarse particles in urban areas can contain all of the components found in more rural areas, but can also be contaminated by a number of additional materials, from motor-vehicle-related emissions to metals and transition elements associated with industrial operations. The Staff Paper concluded that the weight of the dosimetric, limited toxicologic, and atmospheric science evidence, taken together, lends support to the plausibility of the $PM_{10-2.5}$-related effects reported in the urban epidemiologic studies discussed below, and provides support for retaining some standard for thoracic coarse particles so as to continue programs to protect public health from such effects (EPA, 2005, p. 5–49).[58]

The available epidemiologic evidence, discussed in section III.A of the proposal, includes studies of associations between short-term exposure to thoracic coarse particles, indexed by $PM_{10-2.5}$, and health endpoints. More specifically, several U.S. and Canadian studies now provide evidence of associations between short-term exposure to $PM_{10-2.5}$ and various morbidity endpoints. Three such studies conducted in Toronto (Burnett *et al.*, 1997), Seattle (Sheppard, 2003), and Detroit (Ito, 2003) report statistically significant associations between short-term $PM_{10-2.5}$ exposure and respiratory- and cardiac-related hospital admissions, and a fourth study (Schwartz and Neas, 2000), conducted in six U.S. cities (Boston, St. Louis, Knoxville, Topeka, Portage, and Steubenville), reports statistically significant associations across these six areas with respiratory symptoms in children. These studies were mostly done in areas in which $PM_{2.5}$, rather than $PM_{10-2.5}$, is the larger fraction of ambient PM_{10}, and they are not representative of areas with relatively high levels of thoracic coarse particles (EPA, 2005, p. 5–49).

In evaluating the epidemiologic evidence from health studies on associations between short-term exposure to $PM_{10-2.5}$ and mortality, the Criteria Document concluded that such evidence was ''limited and clearly not as strong'' as that for associations with $PM_{2.5}$ or PM_{10} but nonetheless was suggestive of associations with mortality (EPA, 2004a, p. 9–28, 9–32). Statistically significant mortality associations were reported in short-term exposure studies conducted in areas with relatively high $PM_{10-2.5}$ concentrations, including Phoenix (Mar *et al.*, 2003), Coachella Valley, CA (Ostro *et al.*, 2003),[59] and in the initial analysis of data from Steubenville (as part of the Six Cities study, Schwartz *et al.*, 1996; reanalysis, Schwartz, 2003). In a separate reanalysis of the Six Cities study, the $PM_{10-2.5}$ mortality association was not statistically significant for Steubenville (Klemm and Mason, 2003). In areas with lower $PM_{10-2.5}$ concentrations, including the remaining five cities in the Six Cities study, no statistically significant associations were reported with mortality, though most were positive.

The Staff Paper also considered relevant epidemiologic studies indexed by PM_{10} that were conducted in areas where the coarse fraction of PM_{10} is typically much greater than the fine fraction. Such studies include findings of associations between short-term exposure to PM_{10} and hospitalization for cardiovascular diseases in Tucson, AZ (Schwartz, 1997), hospitalization for COPD in Reno/Sparks, NV (Chen *et al.*, 2000), and medical visits for asthma or respiratory diseases in Anchorage, AK (Gordian *et al.*, 1996; Choudhury *et al.*, 1997). In addition, a number of epidemiologic studies have reported significant associations with mortality, respiratory hospital admissions and respiratory symptoms in the Utah Valley area (*e.g.*, Pope, 1989 and 1991; Pope *et al.*, 1992). This group of studies provides additional supportive evidence for associations between short-term exposure to thoracic coarse particles and health effects, particularly morbidity effects, generally in areas not meeting the PM_{10} standards (EPA, 2005, p. 5–50).[60]

In contrast to the findings from the short-term exposure studies discussed above, available epidemiologic studies do not provide evidence that long-term community-level exposure to thoracic coarse particles is associated with mortality or morbidity (EPA, 2005, p. 3–25). More specifically, no association is

[57] The Criteria Document notes that toxicologic studies, in general, use exposure concentrations that are generally much higher than ambient concentrations (EPA, 2004a, p. 9–51).

[58] Eventually, as a result of the data that will be gathered under EPA's new research and monitoring plan , the Agency may be able to further refine its regulation of coarse particles to better target those coarse particles of greatest concern to health.

[59] The Coachella Valley study, like the Seattle study noted above, is subject to additional measurement uncertainties because it used regression techniques to impute $PM_{10-2.5}$ concentrations; this approach fills in missing $PM_{10-2.5}$ data based on relationships developed using data from days when data are available for both PM_{10} and $PM_{2.5}$.

[60] Based on recent air quality data, as well as the summary information provided for PM concentrations used in the studies, the existing PM_{10} standards are not met in any of these study cities except Tucson, AZ. Based on 2002–2004 air quality data, the 98th percentile $PM_{2.5}$ concentrations in three of these areas range from 15 to 25 $\mu g/m^3$, while in Utah Valley the concentrations range from 37 to 54 $\mu g/m^3$.

found between long-term exposure to thoracic coarse particles and mortality in the reanalyses and extended analysis of the ACS cohort (EPA, 2005, p. 8–306–07). Further, little evidence is available on potential respiratory and cardiovascular morbidity effects of long-term exposure to thoracic coarse particles (EPA, 2005, p. 3–23–24).

The Staff Paper concluded that the available body of health evidence, including dosimetric, toxicologic and epidemiologic study findings, supports retaining a NAAQS that would continue to provide protection against the effects associated with short-term exposure to thoracic coarse particles. However, the substantial uncertainties associated with this limited body of epidemiologic evidence on health effects related to exposure to $PM_{10-2.5}$ suggest a high degree of caution in interpreting this evidence, especially at the lower levels of ambient particle concentrations in the morbidity studies discussed above (EPA, 2005, p. 5–50).

Beyond this evidence-based evaluation, the Staff Paper also considered the extent to which $PM_{10-2.5}$-related health risks estimated to occur at current levels of ambient air quality may be judged to be important from a public health perspective, taking into account key uncertainties associated with the estimated risks. Consistent with the approach used to address this issue for $PM_{2.5}$-related health risks, discussed above in section II.A.3, the Staff Paper considered the results of a series of base-case analyses that reflect in part the uncertainty associated with the form of the concentration-response functions drawn from the studies used in the assessment. In this assessment summarized above in section III.A.3, which is much more limited than the risk assessment conducted for $PM_{2.5}$, health risks were estimated for three urban areas (Detroit, Seattle, and St. Louis) by using the reported linear or log-linear concentration-response functions as well as modified functions that incorporate alternative assumed cutpoints as surrogates for potential population thresholds. In considering the risk estimates from this limited assessment, and recognizing the very substantial uncertainties inherent in basing an assessment on such limited information, the Staff Paper concluded that the results for the two areas in the assessment that did not meet the current PM_{10} standards are indicative of risks that can reasonably be judged to be important from a public health perspective, in contrast to the appreciably lower risks estimated for the area that did meet the current standards (EPA, 2005, p. 5–52).

The Staff Paper recognized the substantial uncertainties associated with the limited available epidemiologic evidence and the inherent difficulties in interpreting the evidence for purposes of setting appropriate standards for thoracic coarse particles. Nonetheless, in considering the available evidence, the public health implications of estimated risks associated with current levels of air quality, and the related limitations and uncertainties, the Staff Paper concluded that this information supports (1) revising the current PM_{10} standards in part by revising the indicator for thoracic coarse particles, and (2) consideration of a standard that will continue to provide public health protection from short-term exposure to thoracic coarse particles of concern that have been associated with morbidity effects and possibly mortality at current levels in some urban areas (EPA, 2005, p. 5–52).

In CASAC's review of these Staff Paper recommendations, there was unanimous agreement among CASAC Panel members that ''there was a need for a specific primary standard to address particles in the size range of 2.5 to 10 microns'' (Henderson, 2005b, p. 4). In making this recommendation, CASAC indicated its agreement with the summary of the scientific data regarding the potential adverse health effects from exposures to thoracic coarse particles in section 5.4 of the Staff Paper upon which the EPA staff recommendations were based.

Unlike the case in the current $PM_{2.5}$ review, neither EPA staff nor CASAC concluded that it was necessary to revise the PM_{10} standards to provide additional health protection against coarse particles beyond that afforded by the current standards. Rather, as noted above, staff and CASAC found that the most recent scientific information suggested it was possible to move to a more direct measurement of thoracic coarse particles via a $PM_{10-2.5}$ indicator, and this was the major basis for recommending revisions to the current 24-hour PM_{10} standard. In considering what level of protection was appropriate, staff and CASAC recommended consideration of a range of levels for alternative 24-hour coarse particle standards, from levels which would be more stringent than the current 24-hour PM_{10} standard to a level that would provide protection that was roughly equivalent to that provided by the current 24-hour PM_{10} standard.

In considering whether the primary PM_{10} standards should be revised at the time of proposal, the Administrator considered the rationale and recommendations provided by the Staff Paper and CASAC, and the public comments received through the time of proposal. The Administrator provisionally concluded that the health evidence, including dosimetric, toxicologic and epidemiologic study findings, supported retaining a standard to provide continued protection against effects associated with short-term exposure to thoracic coarse particles. Further, the Administrator expressed the belief that the new evidence on health effects from studies that use $PM_{10-2.5}$ as a measure of thoracic coarse particles, together with the much more extensive data now available to characterize air quality in terms of $PM_{10-2.5}$, provided an appropriate basis for revising the current PM_{10} standards in part by revising the indicator to focus more narrowly on particles between 2.5 and 10 μm. The Administrator also noted that the need for a standard for thoracic coarse particles had already been upheld based upon evidence of health effects considerably more limited than now available. *ATA I*, 175 F.3d at 1054. Based on these considerations, the Administrator provisionally concluded that the current suite of PM_{10} standards should be revised, and that the revised standard(s) should be set at a level that would ensure an equivalent level of protection to the current suite of standards (71 FR 2665).

2. Comments on the Need for Revision

The vast majority of public comments on coarse particles raised issues related to the proposed revisions to the indicator for thoracic coarse standards, particularly the proposal to adopt a new $PM_{10-2.5}$ indicator that was qualified to focus on particles associated with particular types of emissions sources and to impose stringent monitor site-suitability criteria for NAAQS-comparable monitors. These comments are addressed below in section III.C. Comments more specific to the 24-hour and annual standards (*i.e.*, on averaging time, form, and level) are addressed below in section III.D. This section addresses those comments that, directly or indirectly, addressed the need to continue the kind of protection against coarse particles that is provided by the current PM_{10} standards.

A substantial majority of commenters supported the Administrator's provisional conclusion that it is necessary to maintain a standard to continue protection against the health effects associated with short-term exposure to thoracic coarse particles. Those advocating a coarse particle standard included public health organizations such as the American Lung Association, the American Heart

Association, and the American Cancer Society; environmental groups such as Environmental Defense, Earthjustice and Natural Resources Defense Council; the Children's Health Protection Advisory Committee, which provides the EPA Administrator with advice on children's health issues; all state and local air pollution control agencies commenting on the proposed coarse particle standard; and Tribal groups such as the National Tribal Caucus, the National Tribal Environmental Council, and numerous individual Tribes.

These commenters agreed with EPA that the currently available scientific evidence clearly supports the need to provide continued protection from health effects associated with coarse particle exposure. Citing the Criteria Document and the Staff Paper, those commenters providing a more detailed rationale stressed the availability of epidemiologic, toxicologic and dosimetric studies showing associations between thoracic coarse particles and multiple morbidity and mortality endpoints. Many of these commenters also cited CASAC's recommendation in favor of continued protection. Moreover, some of these commenters pointed to particular studies, such as Ito (2003), Mar *et al.* (2003) and Ostro *et al.* (2003), which they concluded show that coarse particles are associated with hospital admissions or mortality and that coarse particles may even have stronger effects than fine particles in some instances. Several also cited two recent independent reviews (Brunekreef and Forsberg, 2005; WHO, 2005) which considered many of the same scientific studies on the health effects of coarse particles that were included in the Criteria Document as support for separate standards for coarse particles, in addition to standards for fine particles.

In general, this body of commenters opposed revisions that they believed would reduce the level of protection provided by the current PM_{10} standards. For example, the comments of the American Lung Association and five environmental groups stated (American Lung Association *et al.*, p. 81):

> We strongly support the need for a coarse PM standard * * *. However, the coarse particle standard proposed by EPA is an egregious step backwards in protection of human health and welfare compared to the status quo * * *. If EPA feels it lacks adequate data to undertake the change in the coarse PM indicator to a $PM_{10-2.5}$ standard, without reducing current protections * * * then the Agency must retain the existing PM_{10} NAAQS.

Citing the more abundant evidence from studies focusing on short-term exposures, these commenters advocated maintaining a 24-hour standard for thoracic coarse particles, at a minimum. Several of them also recommended an annual standard for thoracic coarse particles to protect against possible long-term effects, despite a significantly more limited body of evidence (for specific comments on averaging time, see section III.D.1 below).

Many of these commenters, while recognizing that the epidemiologic evidence available to support specific coarse particle standards is weaker than that for fine particles, believed that the weight of evidence required revisions that provided a greater degree of protection, on a national basis, than that afforded by the current PM_{10} standards (for specific comments on level, see section III.D.2 below). Some commenters favoring a coarse particle standard supported their arguments by reference to emerging science from new toxicologic and epidemiologic studies that were not included in the Criteria Document. In general, however, these ''new'' studies were used in support of commenters' concerns about the proposal to qualify the indicator (discussed in section III.C.2 below), and not to support their comments on the need for coarse particle standards.

The EPA generally agrees with these commenters regarding the need to provide continued protection from short-term exposure to coarse particles that may be harmful. The scientific evidence cited by these commenters was generally the same as that discussed in the Criteria Document and the Staff Paper and the commenters' recommendations for retaining a coarse particle standard are broadly consistent with staff and CASAC recommendations on this issue. To the limited extent that some commenters cited ''new'' scientific studies in support of their arguments in favor of retaining a coarse particle standard, EPA notes that it is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review. Although EPA is not basing its final decisions in this review on such information, the Agency will consider the newly published studies for purposes of decision making in the next PM NAAQS review, as discussed above in section I.C. Nonetheless, in provisionally evaluating commenters' arguments concerning the need for revision to or elimination of the current standards, the Agency notes that its preliminary analysis suggests such studies would not materially change the conclusions in the Criteria Document.

In sharp contrast, a number of commenters, including virtually all of those representing industry associations and businesses, recommended revising the PM_{10} standards by revoking both the 24-hour and annual standards. These groups argued that the current body of scientific evidence is insufficient to justify either retaining the current PM_{10} standards or setting a revised standard for thoracic coarse particles at this time. These commenters included the National Cattlemen's Beef Association, the National Mining Association, the American Farm Bureau Federation, the Alliance of Automobile Manufacturers, the Engine Manufacturers Association, the National Association of Home Builders, and the Coarse Particle Coalition, which includes the National Stone, Sand and Gravel Association, the Industrial Minerals Association, the American Forest and Paper Association, the Portland Cement Association and the National Cotton Council. These commenters stressed the uncertainties, particularly those associated with interpreting the limited number of epidemiologic studies focusing on coarse particle health effects, and stated that EPA had failed to demonstrate that a coarse particle standard is necessary to protect public health. These commenters recommended deferring the decision on the appropriateness of setting a coarse particle standard pending additional monitoring and scientific research on health effects associated with exposure to coarse particles.

These commenters criticized the key epidemiologic studies cited by EPA, referring especially to the alternative interpretations of the evidence presented in the proposal and citing a review and critique of key studies prepared by an academic consultant. They also argued that all coarse particle epidemiologic studies are flawed to the extent that they rely on air quality data from central monitors in exposure assessments. Based on these arguments, the commenters asserted that EPA's risk assessment cannot be used to demonstrate that ambient coarse particles present a significant risk to public health, and therefore EPA cannot maintain the existing PM_{10} NAAQS or establish a revised NAAQS to address coarse particles. Each of these issues is further summarized and discussed below.

In discussing their disagreement with EPA's interpretation of four key epidemiologic studies (Ito, 2003; Burnett *et al.*, 1997; Mar *et al.*, 2003; Ostro *et al.*, 2003), these commenters placed significant weight on the alternative interpretations of these

studies that EPA provided in the proposal to encourage additional public comment (71 FR 2671–72). In particular, they criticized EPA's reliance on the single pollutant models in these and other studies as biased because the models omit $PM_{2.5}$ and gaseous co-pollutants. The commenters argued that when $PM_{2.5}$ or gaseous co-pollutants were added to the underlying models, the effects associated with $PM_{10-2.5}$ lost statistical significance. These commenters also stated that EPA failed to consider and give appropriate weight to a significant number of studies which relied on larger and more powerful data sets, were of longer duration, and assessed $PM_{10-2.5}$ using multi-pollutant models, but did not find any statistically significant associations, including Schwartz *et al.* (1996), Thurston *et al.* (1994), Sheppard (2003), Fairley (2003), and Lipfert *et al.* (2000). They further summarized and attached a ''detailed review of the cited studies'' prepared by an academic consultant, which they stated reveals numerous deficiencies that undermine the use of these studies to support the proposed coarse particle standard or any alternative standard. Based on all of the above, one commenter claimed that a ''fair and sound'' assessment of evidence would not conclude coarse particles have effects at ambient concentrations (National Mining Association, p. 14).

The rationale for these commenters' conclusions, however, do not consider important aspects of the rationale for retaining coarse particle protection and are inconsistent with CASAC and other recent reviews of the scientific evidence. As summarized in section III.A of the proposal, the scientific evidence contained in the Criteria Document and Staff Paper, both of which have been reviewed and found acceptable for use in regulatory decision making by CASAC, supports the need for some standard to provide continued protection from coarse particles.[61] The alternative interpretation of the evidence espoused by these commenters essentially argues that it is more reasonable to presume that the positive results from one-pollutant $PM_{10-2.5}$ statistical models is the result of bias associated with omitting co-pollutants, especially $PM_{2.5}$, for which the evidence is much stronger. EPA does not accept this argument for both technical and public health policy reasons. The Criteria Document and Staff Paper explain the rationale for reliance on single pollutant models in these studies, while recognizing the significant uncertainties in the limited number of studies available (EPA, 2004, section 8.4.3; EPA, 2005, p. 3–46). These documents illustrate the results of a number of studies that examined co-pollutants (Figures 8–16 through 8–18 of the Criteria Document), where it can be seen that, in most cases, the inclusion of gaseous co-pollutants does little to change the effects estimate for $PM_{2.5}$, although in some cases it does. Recognizing the additional uncertainties in measuring coarse particles (as discussed below), these documents further note the importance of the relative consistency in the size of effects estimates for coarse particles as well as the pattern of generally positive associations, and the need for considering the results of recent statistically significant associations found in PM_{10} studies where it is reasonable to expect that the coarse fraction dominated the distribution. It would be unwise to presume, in the face of this evidence, that the single pollutant result for coarse particles is generally the result of omitted gases in the model.

EPA also believes that it is inappropriate to presume that coarse particle or PM10 associations in single or multi-pollutant models can be wholly explained by fine particles. In studies where $PM_{2.5}$ and $PM_{10-2.5}$ have similar effect estimates, it is difficult to determine whether one or both contribute to the result (*e.g.* EPA 2004a, p 8–61). The comparison of $PM_{2.5}$ and $PM_{10-2.5}$ is further complicated by the differential measurement error between the two pollutants, which is generally greater for coarse particles (as discussed below). When both pollutants have similar effect estimates, it is difficult to determine whether one or both contribute to the result (*e.g.* EPA, 2004a, p. 8–61). Some studies conducted in urban areas, however, have found significant associations for coarse particles, but not fine particles. The Criteria Document summarizes a case cross-over study (Lin *et al.*, 2002) conducted in Toronto, that found a significant association of $PM_{10-2.5}$ with asthma hospital admissions in children ages 6–12 that was robust to the inclusion of gaseous co-pollutants, but did not report significant associations for $PM_{2.5}$.[62] Three different studies used essentially the same air quality data set to examine coarse and fine particles in Phoenix (Mar *et al.*, 2000, 2003; Clyde, 2000; Smith *et al.*, 2000). All three studies found significant associations between mortality and $PM_{10-2.5}$, but only one found a significant association for $PM_{2.5}$ (EPA, 2004a, p. 8–57 to 66). Ito (2003) found a significant association in Detroit between hospital admissions for ischemic heart disease and exposure to coarse particles, but not fine particles. While all of these studies have limitations, it is difficult to ignore the fact that, despite the differential measurement error associated with coarse particles, a number of these studies find statistically significant associations for coarse particles, but not for fine particles. For these reasons, EPA believes that it would be inappropriate, based on the limited data currently available, to presume that all of the effects associated with coarse particles in single pollutant models are actually the result of confounding by fine particles.

It is also important to note that in the NAAQS reviews that concluded in 1987 and 1997, EPA found that the scientific evidence then available supported the need to continue regulation of thoracic coarse particles through appropriate NAAQS. This evidence included mechanistic considerations developed from particle dosimetry and toxicology, as well as an integrated assessment of particle composition and both community and occupational epidemiologic studies. By 1997, EPA judged the evidence to be strong enough to propose separate standards for fine and coarse particles. While the D.C. Circuit found problems with the indicator for thoracic coarse particles promulgated in 1997, the court upheld EPA's determination that a standard was needed (*ATA I*, 175 F.3d at 1054). In EPA's judgment, the more recent studies included in the 2004 Criteria Document, even with their recognized limitations, serve to add to, not reduce, the concern present in previous reviews over ambient exposures to coarse particles, particularly in urban areas.

The business and industry commenters also suggested that the epidemiologic studies were flawed by the reliance on data from central monitors to estimate community-level exposures to coarse fraction particles. According to these commenters, this would result in an overestimation of

[61] The Response to Comments document contains more detailed responses to the specific issues these commenters raise regarding the interpretation of the epidemiologic evidence, which is important in terms of the use of these studies for supporting a coarse standard (this section of the preamble) as well as their use in deciding upon an appropriate level of protection (section III.D.2 of this preamble).

[62] Unlike more commonly used time series studies, the design used in this study has the advantage of controlling for confounding by having each case serve as its own control. The Criteria Document notes limitations in available measurement information and adjustment for season that may have influenced the relative results for fine and coarse particles (EPA, 2004a, pp. 185–186).

exposure due to the significant spatial variability associated with coarse particle distributions. Such overestimation, in the commenters' view, would invalidate any statistical associations found between ambient data, as measured by the central monitors, and adverse health effects. The National Mining Association (p. 16–17), for example, noted:

> The spatial variability of coarse PM renders even the few, limited, uncertain epidemiological studies that have been cited by EPA invalid, as well as imprecise * * *. Given that the purported associations between PM coarse and health effects is small to begin with, 71 FR at 2659, the logical conclusion should be that the lack of a demonstrable connection between the monitored ambient data and the level of exposure of the subject population is a fatal flaw that precludes reliance on the studies for any connection between PM coarse and health effects.

These commenters also provided supporting information regarding correlations among monitors and an air quality modeling analysis purporting to show that significant quantities of coarse particles cannot travel more than 1 kilometer from sources.[63]

The Criteria Document and Staff Paper contain detailed analyses of the spatial variability of coarse particle concentrations, as well as other issues that generally result in greater exposure measurement error for coarse particles as compared to fine particles (EPA, 2004a, p. 3–52–53, Appendix 3A; EPA, 2005, pp. 2–36–40, 2–70–73). While EPA agrees that coarse particle measurements from central monitors is subject to potentially large measurement error when used to reflect population exposures in epidemiologic studies, the Agency disagrees with the commenters' assessment of the direction of the resulting bias and with their conclusion that any statistically significant associations between centrally monitored air quality concentrations and adverse health effects measured in these studies are invalid as a result. This issue received substantial attention in the Criteria Document (EPA, 2004a, section 8.4.5). The Criteria Document concluded that such measurement errors are more likely to underestimate the strength and the significance of any association between coarse particles and any adverse health effects observed in the study (EPA, 2004a, pp. 5–126, 8–341). While the spatial variation of coarse particle data is larger than for fine particles, the Staff Paper notes that, on a day-to-day basis, coarse particle data from monitor sites within an urban area can be fairly well correlated, even when substantial differences exist in the absolute concentrations between the sites (EPA, 2005, p. 3–41). The signal that drives statistical associations between ambient concentrations and health effects in time-series studies is the day-to-day changes in concentration, not the absolute daily values. To the extent possible, EPA examined both the day-to-day correlations and annual averages in $PM_{10-2.5}$ taken from multiple monitors in key study locations, such as Detroit, Phoenix and Coachella Valley (Ross and Langstaff, 2005).[64]

In reacting to this issue in opposing comments, the California Air Resources Board similarly stated:

> The current scientific consensus suggests that measurement of coarse particles will typically involve greater errors than that of fine particles. However we reject the * * * implication that therefore these studies are not reliable. In fact, the larger measurement error, which is likely to be random, would make it more difficult to find an association with mortality. It is well accepted in the epidemiological literature that such measurement error will tend to obscure a relationship between an exposure and a given health outcome, assuming that such a relationship exists. Therefore, the measurement error argument cannot be used to nullify an effect that has been observed. If anything, it is likely that the real effects are likely to be larger than those that were estimated. (CARB, p. 11)

The EPA agrees with CARB's analysis of the issue. Therefore, for the purposes of determining whether public health protection is warranted in light of the available evidence, EPA believes that it has interpreted the evidence from these epidemiologic studies correctly, and that despite the uncertainties, the evidence of statistically significant relationships between exposure to coarse particles and adverse health effects is sufficiently strong to support continued regulation of coarse particles.

Some commenters opposed to maintaining a coarse particle standard criticized EPA's risk assessment. These commenters stated that current short-term epidemiologic data are insufficient to serve as the basis for a scientifically sound quantitative risk assessment, without which, they claim, EPA lacks sufficient evidence to establish a standard based on those data. According to these commenters, while EPA may exercise its judgment about future risks and set standards that are preventive in nature, as long as an adequate scientific rationale is presented, the Agency does not have the authority to engage in ''crystal ball speculation'' in the absence of support in the record considered as a whole. (*See e.g.*, Coarse Particle Coalition, p. 8–9, citing *Lead Industries Assoc* v. *EPA*, 647 F. 2d 1130, 1146–7 (DC Cir. 1980), *NRDC* v. *EPA*, 902 F.2d 962, 968, 971 (D.C. Cir. 1990) and *Ethyl Corp.* v. *EPA*, 541 F.2d 1, 13 (D.C. Cir. 1976).) These commenters stated that the NAAQS must address only ''significant risk'', not any risk, and that EPA has failed to demonstrate that coarse particles pose a significant enough risk to human health to warrant a coarse particle standard.

The EPA disagrees on technical, policy, and legal grounds. For reasons specified in the proposal and summarized above, EPA believes that the available scientific evidence is more than adequate to support a decision to continue regulation of coarse particles under the NAAQS. Although the data are weaker than for fine particles and subject to greater measurement error, in several of the studies where comparisons are possible, the normalized relative risk estimates for coarse particles from the new urban/industrial-area studies that were included in the Criteria Document often fall into a similar range as those for fine particles (EPA, 2004a, p. 8–64; EPA, 2005, pp. 3–13 and 3–20). Furthermore, as summarized above, EPA did produce a risk assessment for thoracic coarse particles, which was reviewed by CASAC and included in the Staff Paper (EPA, 2005, Chapter 4). While the limited number of cities and the significant uncertainties noted in the risk assessment and the proposal limit their quantitative usefulness, EPA staff concluded that the risk assessment results for the two urban areas in the assessment that did not meet the current PM_{10} standards are indicative of risks that can reasonably be judged to be important from a public health perspective.

Furthermore, there is no requirement that EPA develop a ''scientifically sound quantitative risk assessment'' before adopting or revising a NAAQS (ATA III, 283 F.3d at 374), or that the Agency must demonstrate significant risk before promulgating a NAAQS.[65] EPA's reliance on evidence from peer-

[63] This issue is discussed in more detail in the Response to Comments document.

[64] In Phoenix, for example, two key sites were highly correlated with similar means. In Detroit/Windsor, correlations were moderate to good, but absolute values were significantly higher in Detroit (Ross and Langstaff, 2005).

[65] See *e.g.*, *American Petroleum Inst.* v. *Costle*, 665 F. 2d at 1186–87: ''In setting margins of safety the Administrator need not regulate only the known dangers to health, but may ''err'' on the side of overprotection by setting a fully adequate margin of safety. Of course the Administrator's conclusions must be supported by the record, and he may not engage in sheer guesswork. Where the Administrator bases his conclusion as to an adequate margin of safety on a reasoned analysis and evidence of risk, the court will not reverse.''

reviewed scientific studies in this review, as well as its reliance on CASAC's unanimous recommendation that there is a need for a standard for thoracic coarse particles, cannot be considered ''crystal ball speculation.''

After careful consideration of all of these comments, EPA continues to believe that the health evidence, including dosimetric, toxicologic and epidemiologic study findings, supports retaining a standard to protect against effects associated with short-term exposure to thoracic coarse particles. As noted above and summarized in section III.A of the proposal, there is a growing body of evidence suggesting causal associations between short-term exposure to thoracic coarse particles and morbidity effects, such as respiratory symptoms and hospital admissions for respiratory diseases, and possibly mortality. As summarized in the proposal (71 FR 2659), the available body of evidence also suggests there is a lack of such effects associated with long-term exposure to thoracic coarse particles. Considering the magnitude of the risks identified in health studies, and the size of potentially susceptible subpopulations such as people with preexisting respiratory diseases, including asthma, and children and older adults, EPA concludes that short-term exposure to thoracic coarse particles can have an important public health impact. The health evidence regarding effects of thoracic coarse particles is limited in some respects and still subject to significant uncertainty. The Administrator has concluded that it is a priority to establish a robust research program that will enable future PM NAAQS reviews to make more informed decisions that will provide more targeted protection against the effects only of those coarse particles and related source emissions that prove to be of concern to public health. The Administrator also notes that the need for a standard for thoracic coarse particles has already been upheld based upon evidence of health effects considerably more limited than now available (*ATA I*, 175 F.3d at 1054).

In the judgment of the Administrator, it is appropriate at this time to retain a standard to address the known and potential public health risks associated with exposure to coarse particles. The Administrator's specific decisions regarding the indicator, averaging time, level and form of a standard for thoracic coarse particles are described below.

C. Indicator for Thoracic Coarse Particles

1. Introduction

As outlined above, at the time of proposal the Administrator judged it appropriate, based on an evaluation of the available scientific evidence, to propose a new indicator of thoracic coarse particles defined to include those particles between 2.5 and 10 μm in diameter, or $PM_{10-2.5}$, and qualified to focus on the mix of thoracic coarse particles generally present in urban environments. In making this determination, the Administrator relied heavily on key findings and observations from the Criteria Document and Staff Paper, and on recommendations from CASAC. The Staff Paper made the following general observations about the $PM_{10-2.5}$ indicator:

(1) The most obvious choice for a thoracic coarse particle standard is the size-differentiated, mass-based indicator used in the epidemiologic studies that provide the most direct evidence of such health effects, $PM_{10-2.5}$.

(2) The upper size cut of a $PM_{10-2.5}$ indicator is consistent with dosimetric evidence that continues to reinforce the finding from past reviews that an aerodynamic size of 10 μm is a reasonable separation point for particles that penetrate to and potentially deposit in the thoracic regions of the respiratory tract.

(3) The lower size cut of such an indicator is consistent with the choice of 2.5 μm as a reasonable separation point between fine and coarse fraction particles.

(4) Further, the limited available information is not sufficient to define an indicator for thoracic coarse particles solely in terms of metrics other than size-differentiated mass, such as specific chemical components.

(5) The available epidemiologic evidence for effects of $PM_{10-2.5}$ exposure is quite limited and is inherently characterized by large uncertainties, reflective in part of the more heterogeneous nature of the spatial distribution and chemical composition of thoracic coarse particles and the more limited and generally uncertain measurement methods that have historically been used to characterize their ambient concentrations.

In evaluating relevant information from atmospheric sciences, toxicology, and epidemiology related to thoracic coarse particles, the Staff Paper also noted that there appear to be clear distinctions between (1) the character of the ambient mix of particles generally found in urban areas as compared to that found in non-urban and, more specifically, rural areas, and (2) the nature of the evidence concerning health effects associated with thoracic coarse particles generally found in urban versus rural areas.[66] Based on such information, and on specific initial advice from CASAC (Henderson, 2005a), the Staff Paper considered a more narrowly defined indicator for thoracic coarse particles that would focus on the mix of such particles that is characteristic of the mix generally found in urban areas where thoracic coarse particles are strongly influenced by traffic-related or industrial sources. In so doing, the Staff Paper focused on comparing the potential health effects associated with thoracic coarse particles in urban and rural settings, as discussed below.

The Staff Paper also noted that atmospheric science and monitoring information indicates that exposures to thoracic coarse particles tend to be higher in urban areas than in nearby rural locations. Further, the mix of thoracic coarse particles typically found in urban areas contains a number of contaminants that are not commonly present to the same degree in the mix of natural crustal particles that is typical of rural areas. The elevation of $PM_{10-2.5}$ levels in urban locations as compared to those at nearby rural sites suggests that sources located within urban areas are generally the cause of elevated urban concentrations; conversely, $PM_{10-2.5}$ concentrations in such urban areas are not largely composed of particles blown in from more distant regions (EPA, 2005, sections 2.4.5 and 5.4.2.1). Important sources of thoracic coarse particles in urban areas include dense traffic that suspends significant quantities of dust from paved roads, as well as industrial and combustion sources and construction activities that contribute to ambient coarse particles both directly and through deposition to soils and roads (EPA, 2005, Table 2–2).

[66] In general, EPA believes it is appropriate to draw a distinction between two general types of ambient mixes of coarse particles: ''urban'' and ''non-urban''. The first term characterizes the mix in more heavily populated urban areas, where sources such as motor vehicles and industry contribute heavily to ambient coarse particle concentrations and composition. The term ''non-urban,'' on the other hand, encompasses mixes in a variety of other locations outside of urbanized areas, including mixes in rural areas which are likely to be dominated by natural crustal materials (and where urban types of sources are largely absent or, in the case of motor vehicles, are not present to the same degree). It should be noted that some types of sources are present in both urban and non-urban areas. Industrial sources, for example, are found in non-urban areas, though they are more commonly located in urban areas. Similarly, agricultural and mining sources are primarily non-urban sources, but may be found in or near urban areas as well.

The Staff Paper concluded that the mix of thoracic coarse particles in urban areas would likely differ in composition from that in rural areas, being influenced to a relatively greater degree by components from urban mobile and stationary source emissions.

While detailed composition data are more limited for $PM_{10-2.5}$ than for $PM_{2.5}$, available measurements from some areas as well as studies of road dust components do show a significant influence of urban sources on both the composition and mass of thoracic coarse particles generally found in urban areas. Although crustal elements and natural biological materials represent a significant fraction of thoracic coarse particles in urban areas, both their relative quantity and character may be altered by urban sources (EPA, 2005, p. 5–54). Traffic-related activities can also grind and resuspend vegetative materials into forms not as common in more natural areas (Rogge *et al.*, 1993). Studies of urban road dusts find that levels of a variety of components are increased from traffic as well as from other anthropogenic urban sources, including products of incomplete combustion (*e.g.* polycyclic aromatic hydrocarbons) from motor vehicle emissions and other sources, brake and tire wear, rust, salt and biological materials (EPA, 2004a, p. 3D–3). Limited ambient coarse fraction composition data from various comparisons show that metals and sometimes elemental carbon contribute a greater proportion of thoracic coarse particle mass in urban areas than in nearby rural areas. In addition, while large uncertainties exist in emissions inventory data, the Staff Paper observed that major sources of $PM_{10-2.5}$ emissions in the urban counties in which epidemiologic studies have been conducted are paved roads and ''other'' sources (largely construction), and that such areas also have larger contributions from industrial emissions, whereas unpaved roads and agriculture are the main sources of $PM_{10-2.5}$ emissions outside of urban areas.

In the proposal, EPA also stated that toxicologic studies, although quite limited, support the view that thoracic coarse particles from sources common in urban areas are of greater concern than uncontaminated materials of geologic origin. One major source of thoracic coarse particles in urban areas is paved road dust; the Criteria Document discussed results from a recent toxicologic study in which road tunnel dust particles had greater allergy-related activity than several other particle samples (Steerenberg *et al.*, 2003; EPA, 2004a, pp. 7–136–137). This study supports evidence available in the last review regarding potential effects of road dust particles (EPA, 1996b, p. V–70). In contrast, a number of studies have reported that Mt. St. Helens volcanic ash, an example of uncontaminated natural crustal material of geologic origin, has very little toxicity in animal or *in vitro* toxicologic studies (EPA, 2004a, p. 7–216).

A few toxicologic studies have used ambient thoracic coarse particles from urban/suburban locations ($PM_{10-2.5}$), and the results suggest that effects can be linked with several components of $PM_{10-2.5}$. These *in vitro* toxicologic studies linked thoracic coarse particles with effects including cytotoxicity, oxidant formation, and inflammatory effects (EPA, 2005, sections 3.2 and 5.4.1). While these studies cannot be used for quantitative assessment of morbidity or mortality effects, they suggest that several components (*e.g.*, metals, endotoxin, other materials) may have roles in various health responses but do not suggest a focus on any individual component.

Although largely focused on undifferentiated PM_{10}, the series of epidemiologic observations and toxicologic experiments related to the Utah Valley suggest that directly emitted (fine and coarse) and resuspended (coarse) urban industrial emissions are of concern. Of particular interest are area studies spanning a 13-month period when a major source of PM_{10} in the area, a steel mill, was not operating. Observational studies found that respiratory hospital admissions for children were lower when the plant was shut down (Pope, 1989). More recently, a set of toxicologic and controlled human exposure studies have used particles extracted from filters from ambient PM_{10} monitors from periods when the plant did and did not operate. In both human volunteers and animals, greater lung inflammatory responses were reported with particles collected when the source was operating, as compared to the period when the plant was closed (EPA, 2004a, p. 9–73). In addition, in some studies it was suggested that the metal content of the particles was most closely related to the effects reported (EPA, 2004a, p. 9–74). While peak days in the Utah Valley occur in conditions that enhance fine particle concentrations, over the long run, over half of the PM_{10} was in the coarse fraction. The aggregation of particles collected on the filters during the study period reflects this long-term composition and represent the kinds of industrial components that would be incorporated in road dusts in the area.

The Staff Paper also noted that epidemiologic studies that have examined exposures to thoracic coarse particles generally found in urban environments, together with studies that have taken into account exposures to natural crustal materials typical of rural areas, generally support the view that the mix of thoracic coarse particles generally found in urban areas is of concern to public health, in contrast to natural crustal dusts of geologic origin. With respect to the urban results, several recent studies have shown associations between $PM_{10-2.5}$ and health outcomes in a few sites across the U.S. and Canada. Associations have been reported with morbidity in a few urban areas, some of which had relatively low $PM_{10-2.5}$ concentrations. For mortality, statistically significant associations have been reported only for two urban areas that have notably higher ambient $PM_{10-2.5}$ concentrations. These associations are with short-term exposures to aggregated $PM_{10-2.5}$ mass, and no epidemiologic evidence is available on associations with different components or sources of $PM_{10-2.5}$. However, these studies have all been conducted in urban areas of the U.S., and thus reflect effects associated with the ambient mix of thoracic coarse particles generally present in urban environments, which includes PM from traffic and industrial sources.

The Staff Paper also pointed to other evidence from epidemiologic studies suggesting that mortality and possibly other health effects are not associated with thoracic coarse particles from dust storms or other such wind-related events that result in suspension of natural crustal materials of geologic origin. The clearest example is a study in Spokane, WA, which specifically assessed whether mortality was increased on dust-storm days using case-control analysis methods. The average PM_{10} level was more than 200 $\mu g/m^3$ higher on dust storm days than on control days, and the authors report no evidence of increased mortality on these specific days (Schwartz *et al.*, 1999). One caveat of note is the possibility that people may reduce their exposure to ambient particles on the dustiest days (*e.g.*, Gordian *et al.*, 1996; Ostro *et al.*, 2000). Nevertheless, these studies provide no suggestion of significant health effects from uncontaminated natural crustal materials that would typically form a major fraction of coarse particles in rural areas.

Beyond the urban and rural distinctions discussed above, the Staff Paper also considered the extent to which there is evidence of effects from

exposure to the ambient thoracic coarse particles in communities predominantly influenced by agricultural or mining sources.[67] For example, in the last review, EPA considered health evidence related to long-term silica exposures from mining activities, but found that there was a lack of evidence that such emissions contribute to effects linked with ambient PM exposures (EPA, 1996b, p. V–28). Similarly in this review, there is an absence of evidence related to such community exposures. While crustal and organic dusts generated from agricultural activity can include a variety of biological materials, and some occupational studies discussed in the Criteria Document report effects at occupational exposure levels (EPA, 2004a, Table7B–3, p. 7B–11), such studies do not provide relevant evidence for effects at the much lower levels of community exposure. Further, it is unlikely that such predominantly non-urban sources contribute to the effects reported in the recent urban epidemiologic studies.

The Criteria Document concluded its integrated assessment of the effects of natural crustal materials as follows:

> Certain classes of ambient particles appear to be distinctly less toxic than others and are unlikely to exert human health effects at typical ambient exposure concentrations (or perhaps only under special circumstances). For example, particles of crustal origin, which are predominately in the coarse fraction, are relatively non-toxic under most circumstances, compared to combustion-related particles (such as from coal and oil combustion, wood burning, etc.) However, under some conditions, crustal particles may become sufficiently toxic to cause human health effects. (EPA, 2004a, p. 8–344)

The Staff Paper assessment of the available evidence relevant to the appropriate scope of an indicator for coarse particles can be summarized as follows. Ambient concentrations of thoracic coarse particles generally reflect contributions from local sources, and the limited information available from speciation of thoracic coarse particles and emissions inventory data indicate that the sources of thoracic coarse particles in urban areas generally differ from those found in non-urban areas. As a result, the mix of thoracic coarse particles people are typically exposed to in urban areas can be expected to differ appreciably from the mix typically found in non-urban or rural areas. Ambient $PM_{10-2.5}$ exposure is associated with health effects in studies conducted in urban areas, and the limited available health evidence more strongly implicates the ambient mix of thoracic coarse particles that is dominated by traffic-related and industrial sources than that dominated by uncontaminated soil or geologic sources. The limited evidence does not support either the existence or the lack of causative associations for community exposures to thoracic coarse particles from agricultural or mining industries. Given the apparent differences in composition and in the epidemiologic evidence, the Staff Paper concluded that it is not appropriate to generalize the available evidence of associations with health effects that have been related to thoracic coarse particles generally found in urban areas and apply it to the mix of particles typically found in non-urban or rural areas (EPA, 2005, p. 5–57). The Staff Paper concluded that the available evidence collectively suggests that a more narrowly defined indicator for thoracic coarse particles should be considered that would protect public health against effects that have been linked with the mix of thoracic coarse particles generally present in urban areas. Such an indicator would be principally based on particle size, but also reflect a focus on the mix of thoracic coarse particles that is generally present in urban environments and the sources that principally generate that mix. The Staff Paper recommended consideration of thoracic coarse urban particulate matter ($UPM_{10-2.5}$) as an indicator for a thoracic coarse particle standard, referring to the mix of airborne particles between 2.5 and 10 μm in diameter that are generally present in urban environments, which, as discussed above, are principally comprised of resuspended road dust typical of high traffic-density areas and emissions from industrial sources and construction activities (EPA, 2005, p. 5–54, 5–57–58). The Staff Paper concluded that such an indicator would more likely be an effective indicator for standards to protect against health effects that have been associated with thoracic coarse particles than a more broadly focused $PM_{10-2.5}$ indicator. This indicator would also be consistent with a cautious interpretation of the epidemiologic evidence that does not potentially over-generalize the results of the limited available studies.

In conjunction with this recommendation of an indicator defined in terms of the mix of thoracic coarse particles that are generally present in urban areas, the Staff Paper also discussed the importance of a monitoring network designed to be consistent with the intent of such an indicator and to facilitate implementation of such a standard. It should be noted that EPA has historically used other implementation-related policies, specifically its guidelines regarding the handling of data affected by exceptional or natural events, to address elevations in thoracic coarse particle levels that may occur in urban areas as a result of dust storms or other such events for which the staff-recommended indicator was not intended to apply. The Staff Paper recommended that both new criteria for monitor network design and revised natural/exceptional events policies should work in concert with a revised thoracic coarse particle indicator to ensure the most effective application of a thoracic coarse particle standard.

In its review of the Staff Paper recommendation for a thoracic coarse particle indicator (Henderson, 2005b, p. 4), the CASAC generally agreed that ''thoracic coarse particles in urban areas can be expected to differ in composition from those in rural areas;'' that ''coarse particles in urban or industrial areas are likely to be enriched by anthropogenic pollutants that tend to be inherently more toxic than the windblown crustal material which typically dominates coarse particle mass in arid rural areas;'' and that ''evidence of associations with health effects related to urban coarse-mode particles would not necessarily apply to non-urban or rural coarse particles.'' Further, most CASAC Panel members concurred that ''the current scarcity of information on the toxicity of rural dusts makes it necessary'' for EPA to base its standard for thoracic coarse particles ''on the known toxicity of urban-derived coarse particles.'' While most Panel members concurred with the thoracic coarse particle indicator recommended in the Staff Paper, a few members recommended specifying an unqualified $PM_{10-2.5}$ indicator in conjunction with monitoring network design criteria and natural/exceptional events policies that would emphasize urban influences. In either case, CASAC indicated that the intent of any such indicator should be to ''provide protection against those components of $PM_{10-2.5}$ that arise from anthropogenic activities occurring in or near urban and industrial areas.''

Based on these considerations, the Administrator proposed to establish a new indicator for thoracic coarse particles in terms of $PM_{10-2.5}$, qualified so as to include any ambient mix of $PM_{10-2.5}$ that is dominated by resuspended dust from high-density traffic on paved roads and PM generated

[67] As used in the Staff Paper, the term ''mining sources'' is intended to include all activities that encompass extraction and/or mechanical handling of natural geologic crustal materials. In the context of this rulemaking, neither mining nor agricultural sources are included in the more general category of ''industrial sources.''

by industrial sources and construction sources, and to exclude any ambient mix of $PM_{10-2.5}$ that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources (71 FR 2667–68). Furthermore, EPA proposed that ''[a]gricultural sources, mining sources, and other similar sources of crustal material shall not be subject to control in meeting this standard'' (71 FR 2699). As summarized above in section I.E, the proposed standard also included specific monitor site-suitability requirements which any monitor would have to meet in order to be used for comparison to the NAAQS, including a requirement that such monitors be sited in urbanized areas with a minimum population of 100,000. These requirements were designed to ensure that the monitors were capturing the ambient mix of $PM_{10-2.5}$ dominated by the sources of concern.

Subsequent to the proposal, CASAC provided additional comments to the Administrator on the proposed indicator for thoracic coarse particles. In a letter dated March 21, 2006, the Committee stated that ''the PM Panel was pleased to see that the indicator for coarse thoracic particles of concern to public health took into account some of the various approaches that the PM Panel identified for consideration'' (Henderson 2006, p. 4). The CASAC reiterated its earlier statement that ''the current scarcity of information on the toxicity of rural dusts makes it necessary for the Agency to base its regulations on the known toxicity of urban-derived coarse particles.'' However, the Committee went on to say that ''the CASAC neither foresaw nor endorsed a standard that specifically exempts all agricultural and mining sources, and offers no protection against episodes of urban-industrial $PM_{10-2.5}$ in areas of populations less than 100,000.'' The Committee recommended the ''expansion of our knowledge of the toxicity of rural dusts rather than exempting specific industries (*e.g.* mining, agriculture)'' from control under the standard (*id* at 5).

2. Comments on Indicator for Thoracic Coarse Particles

The EPA received a large number of comments on its proposed decision with regard to the indicator of thoracic coarse particles which overwhelmingly opposed the proposed indicator. Few commenters unconditionally supported EPA's proposal to replace the PM_{10} indicator with a qualified $PM_{10-2.5}$ indicator that would provide targeted protection by including certain ambient mixes of thoracic coarse particles and excluding others. Support for the proposed approach came almost entirely from those industrial sectors whose sources were excluded from the proposed qualified $PM_{10-2.5}$ indicator (*i.e.*, agriculture and mining interests). While these commenters argued that EPA should not maintain any standard for thoracic coarse particles, they conditionally supported the qualified indicator if any standard were to be set. In contrast, all other commenters, including environmental and public health groups, State and local agencies, and industries not excluded from the proposed indicator (*e.g.*, transportation and construction), opposed the proposed qualified indicator. Representatives from a variety of groups who otherwise disagreed on various aspects of the proposed indicator commented on the need for additional research to address the uncertainties in the current body of evidence regarding coarse particles and health effects. In addition, a variety of commenters urged EPA to deploy additional $PM_{10-2.5}$ monitors in both urban and rural areas, consistent with the advice of CASAC, to provide a more robust and complete body of evidence regarding coarse particle effects.

Commenters conditionally supporting the proposal expressed the view that EPA should exclude non-urban wind-blown dust and soil from the $PM_{10-2.5}$ indicator. According to these commenters, ''such particles have been shown to be nontoxic, and the scientific studies show that they are not associated with adverse health effects' (American Farm Bureau Federation, p. 1). Furthermore, these commenters agreed with the proposed exclusion for agricultural and mining sources, stating that ''the preponderance of scientific evidence continues to demonstrate that fugitive dust from agricultural and mining operations presents no substantial health or welfare concerns' (National Mining Association, p. 1; see also National Cattlemen's Beef Association, p. 1). These commenters quoted extensively from the Criteria Document and Staff Paper, and made points that were in many cases conceptually similar to the arguments in these documents and in the proposal. These commenters also tended to argue that there is substantial scientific evidence showing an absence of health effects from rural particles.

These commenters cited differences in the composition of the mix of particles in urban areas versus the mix of particles in non-urban areas, which they stated is dominated by wind-blown soil fractions including silicates, primary organic materials including ground plant matter, residential wood smoke, and dust from unpaved roads. Though the coarse particle mix in urban areas also contains significant crustal materials, the commenters stated that it is contaminated by a wide variety of industrial and combustion-related byproducts, such as metals and organic materials (tire and brake wear, vehicle exhaust, industrial emissions, residential fuel combustion). These commenters noted that studies conducted in urban areas have linked health effects specifically to these urban-industrial contaminants. For example, the American Farm Bureau Federation cited the distinction between studies that found health effects related to traffic emissions in urban areas (Pearson *et al.*, 2000; Kramer *et al.*, 2000; and Lin *et al.*, 2002) and a study they suggested found a strong association between cardiovascular mortality and motor vehicle exhaust components, but a negative association between soil and total mortality (Mar *et al.*, 2000).[68] Some of these commenters argued that coarse mode particles, especially crustal coarse mode particles, are unlikely to serve as carriers of urban-area contaminants because they have less surface area, do not adsorb contaminants easily, and have short atmospheric residence times. These commenters conditionally agreed with EPA's proposed goal of focusing regulatory efforts on the sources known to be associated with toxic coarse particles, especially traffic (Coarse Particle Coalition). Some of these commenters cited new studies completed after the close of the Criteria Document as providing additional evidence of associations between traffic-related emissions and adverse health effects (*e.g.* Kim *et al.*, 2004; Ryan *et al.*, 2005; Garshick *et al.*, 2003; McDonald *et al.*, 2004; and Ostro *et al.*, 2006).

These commenters also stated that while urban contaminants may increase the toxicity of coarse particles, studies have demonstrated a lack of adverse effects associated with exposure to coarse particles in non-urban areas (*e.g.*, Buist *et al.* (1983) study of exposure to Mount St. Helens' ash among diabetic children). Furthermore, these commenters argued that studies have found a lack of effects associated with exposure to crustal materials in general. They cited the lack of an association between mortality and dust storms found in Schwartz *et al.* (1999) and also noted that studies such as the 6-city study by Laden *et al.* (2000) have found

[68] Commenters cite the original publication. In the subsequent reanalysis, the investigators report ''our original findings remained unchanged'' (Mar *et al.* 2003).

that crustal material, in both the fine and coarse fractions, is not associated with increased mortality. Thus, these commenters argued that there is sufficient evidence to show that crustal particulate matter is essentially benign and therefore should be excluded from the coarse particle indicator.

The EPA agrees with these commenters that the strongest available evidence relates to the toxicity of the ambient mix of coarse particles found in urban environments. The limited evidence available from epidemiologic and toxicologic studies indicates exposure to ambient thoracic coarse particulate in urban areas is associated with health effects, and the health evidence more strongly implicates coarse particles from urban types of sources such as resuspended dust from high-density traffic on paved roads and PM generated by industrial sources and construction sources than coarse particles from uncontaminated soil or geologic sources. The EPA also agrees that there is far more evidence concerning health effects associated with thoracic coarse particles in urban areas than in non-urban areas. However, EPA disagrees with these commenters that there is sufficient evidence to demonstrate that there are no adverse health effects from community-level exposure to coarse particles in non-urban areas. Rather, the existing evidence is inconclusive with regard to whether or not community-level exposures to thoracic coarse particles are associated with adverse health effects in non-urban areas. However, EPA does agree with these commenters that additional research is needed to clarify this issue and to reduce some of the other uncertainties regarding the effects associated with coarse particles. As discussed above, the EPA is, in fact, expanding both its research and monitoring programs to collect additional evidence on the differences between coarse particles typically found in urban areas and those typically found in rural areas. Specifically, EPA notes that the Agency's National Center for Environmental Research recently issued a Request for Proposals on ''Sources, Composition, and Health Effects of Coarse Particulate Matter'' which is designed to (1) improve understanding of the type and severity of health outcomes associated with exposure to $PM_{10-2.5}$; (2) improve understanding of subpopulations that may be especially sensitive to $PM_{10-2.5}$ exposures including minority populations, highly exposed groups, and other susceptible groups; (3) characterize and compare the influence of mass, composition, source characteristics and exposure estimates in different locations and differences in health outcomes, including comparisons in rural and urban areas; and (4) characterize the composition and variability of $PM_{10-2.5}$ in towns, cities or metropolitan areas, including comparisons of rural and urban areas. In addition, as described in the final monitoring rule published elsewhere in today's **Federal Register**, EPA and the states will require measurement of $PM_{10-2.5}$ at 75 new multipollutant monitoring sites around the country. These sites will provide continuous measurements of mass as well as chemical speciation. EPA will locate 55 of these sites in urban areas and 20 in rural areas in order to gather information on the composition and transport of coarse particles in urban and rural areas. In addition, these monitors will employ the latest in speciation technology to advance the science so that future regulation will provide more targeted protection against the effects only of those coarse particles and related source emissions that prove to be of concern to public health.

In addition, EPA disagrees with these commenters that there is sufficient evidence to exclude crustal materials from the coarse particle indicator regardless of the degree of contamination. Although there is some evidence that coarse particles of natural geologic origin are relatively non-toxic in their uncontaminated form, the Criteria Document notes that such particles may become sufficiently ''contaminated by toxic trace elements or other components from previously deposited fine PM,'' to cause health effects (EPA, 2004a, 8–344). Indeed, the urban coarse PM associated with adverse health effects in the studies discussed above was, by mass, predominantly crustal in origin.[69] As noted in the proposal and in the response to these commenters on the need to maintain a coarse particle standard, EPA is aware of the studies that found no effects on mortality at lower coarse particle concentrations, but believes, consistent with the Staff Paper and Criteria Document conclusions, that the evidence is suggestive of a coarse particle effect in urban or industrial areas.[70] The EPA continues to believe that urban sources may significantly alter both the relative quantity and character of crustal and natural biological materials in ambient mixes in urban areas. As noted above in section III.C.1, metals and other contaminants such as elemental carbon tend to appear in higher concentrations in the urban $PM_{10-2.5}$ mix, and vegetative materials are ground and resuspended by traffic-related activities into forms not common outside urban areas.

In contrast to those few commenters who conditionally supported EPA's proposed indicator, the vast majority of commenters opposed one or more aspects of EPA's proposed indicator, including: (1) The basic decision to qualify the indicator to focus on particles associated with certain types of sources and to exclude other ambient mixes; and (2) the particular qualifications applied to the indicator, including the proposed siting requirements for coarse particle monitors suitable for comparison with the NAAQS and the proposed exclusion of agricultural, mining, and other similar sources from control under the standard. This large group of commenters advanced scientific as well as legal and policy arguments against drawing a distinction between particles typical of urban versus non-urban or rural areas. These commenters included public health groups such as the American Lung Association, the American Heart Association, the American Cancer Society, the American Diabetes Association, and the American Public Health Association, and environmental groups such as Earthjustice, Environmental Defense, and the Natural Resources Defense Council. It also included the State and Territorial Air Pollution Program

[69] The American Farm Bureau Federation's summary of the results of Mar *et al.* (2000), offered in support of their arguments about the lack of effect of soil or crustal materials, misses some important elements of the study results. A major finding of the original study as well as the reanalysis (Mar *et al.*, 2003) was an association between $PM_{10-2.5}$ particles and mortality. The analysis in this work that examined sources and components examined contributions to the effects of $PM_{2.5}$, not to $PM_{10-2.5}$. In the opinion of the authors, the factor commenters call motor vehicle exhaust ''probably represents the influence of motor vehicle exhaust and resuspended road dust'' (Mar *et al.*, 2000, p. 351). The negative association for ''soil'' in the fine fraction cited by the commenter was apparently related to problems in the $PM_{2.5}$ measurement. When the data were reassessed for the period with an improved sampler, the authors report that the association between soil and mortality was ''positive and significant at 0 days lag'' (ibid., p. 352).

[70] The Laden *et al.* (2000) study cited by commenters was reanalyzed in Schwartz (2003), with qualitatively similar findings. As in Mar *et al.* (2000, 2003), this study examined the associations of crustal materials in the fine particle fraction, in which they make up such a small fraction of fine mass that one of the six cities had to be excluded from the analysis (Laden *et al.*, 2000, p. 945). While this result does not provide any support for associations between coarse crustal materials and mortality, given the lower concentrations of coarse particles in five of the six cities and the lack of examination of coarse particle composition, the results are inconclusive with respect to the potential effects of higher concentrations of coarse particles.

Administrators and the Association of Local Air Pollution Control Officials (STAPPA/ALAPCO) and numerous individual State and local air pollution control agencies, as well as dozens of Tribes and Tribal organizations such as the National Tribal Caucus, the National Tribal Air Association and its parent organization, the National Tribal Environmental Council. In addition, a number of industry groups expressed opposition to the proposal to qualify the coarse particle indicator; in general, these comments came from groups representing industry categories that were not excluded from the proposed indicator, such as the Engine Manufacturers Association, the Alliance of Automobile Manufacturers, and the National Association of Home Builders. Though these industry commenters primarily argued against setting any coarse particle standard at this time, they stated that if a standard were to be adopted, scientific evidence did not support the proposal to qualify the indicator based on the mix of sources present.

Commenters opposed to a qualified coarse particle indicator advanced numerous scientific arguments to support their position. They criticized EPA's interpretation of key epidemiologic studies, such as Gordian *et al.* (1996), Choudhury *et al.* (1997), Ostro *et al.* (2003), Smith *et al.* (2000) and Mar *et al.* (2003), arguing that these studies linked thoracic coarse particles to adverse health effects in environments where crustal components formed a significant part of the ambient mix of $PM_{10-2.5}$. For example, commenters argued that the study conducted by Ostro *et al.* (2003) in Coachella Valley, which found statistically significant associations between exposure to coarse particles and mortality, provides direct evidence of harm from exposure to rural particles. These commenters also challenged the results of Schwartz *et al.* (1999), attributing the lack of statistically significant mortality results in that study to avoidance behavior (*i.e.*, people may stay inside during dust storms) and noting that the study might have drawn different conclusions if morbidity endpoints had been considered. In support of this argument, they pointed to Hefflin *et al.* (1994), which looked at hospitalizations for bronchitis and sinusitis during dust storms and did find a small increase in these effects in the same area.

In addition, a number of commenters, including States, researchers, environmental and public health groups, and industry commenters, cited studies of particle composition as showing that the coarse PM found in rural areas is commonly contaminated with the same toxic components as particles found in urban areas (*e.g.* Alaska Department of Environmental Conservation; American Lung Association; Engine Manufacturers Association; Veranth). Moreover, these commenters noted that rural dusts may contain additional toxic contaminants such as molds, fungi, endotoxins, pesticides, and carbonaceous compounds including polycyclic aromatic hydrocarbons (PAHs), all of which are associated with rural sources and have been shown to produce toxic effects (citing studies including: Monn and Becker 1999; Soukup and Becker 2001; Horvath *et al.*, 1996; Offenberg and Baker, 2000; Eleftheriadis and Colbeck, 2001). (See American Lung Association *et al.*, pp. 92–100.) In addition, some commenters pointed to studies of the composition of coarse particles in particular locations, such as Owens and Mono Lakes in California, as evidence of the dangerous nature of rural particles. Commenters noted that coarse particles from these areas are contaminated by heavy metals, arsenic, and other toxic contaminants, but would be excluded from the proposed indicator.

Commenters critical of the proposed decision to qualify the coarse particle indicator also stated that EPA had inappropriately relied on the relatively few studies involving exposure to crustal materials, especially the Mt. St. Helens' studies. These commenters expressed the view that EPA should not equate exposure to volcanic ash to exposure to coarse particles emitted from agricultural and mining industries. Commenters noted that volcanic ash lacks many of the organic components typical of rural coarse PM, including pesticides and PAHs. Commenters pointed to specific components of coarse particles emitted by agricultural or mining activities, including endotoxins, pesticides, and metals, that they claim are associated with adverse health effects. These commenters argued that coarse particles in rural and other non-urban areas are not generally ''uncontaminated materials of geologic origin'' or ''uncontaminated natural crustal dusts.'' They argued that some of the effects noted in epidemiologic studies of thoracic coarse particles, such as Mar *et al.* (2003), occurred in areas dominated by agricultural or mining dusts (Maricopa County Air Quality Department, p. 3–4). Some commenters also stated that EPA had not demonstrated or even claimed that coarse particles associated with agricultural and mining activities are harmless. Citing a long history of occupational studies documenting effects and EPA's statement in the proposal that ''in the 1987 review, EPA found that occupational and toxicological studies provided ample cause for concern related to higher levels of thoracic coarse particles' (71 FR 2654), these commenters urged EPA to give greater weight to the results of such studies.

A number of commenters opposing a qualified $PM_{10-2.5}$ indicator referenced ''new'' epidemiologic and toxicologic studies which were not included in the Criteria Document in support of their arguments in favor of an unqualified $PM_{10-2.5}$ indicator. Specifically, the commenters pointed to recent epidemiologic studies showing statistically significant adverse health effects from exposure to coarse particles of varying composition, such as one study that found an association between exposure to volcanic ash and wheeze and exercise-induced bronchoconstriction (Forbes *et al.*, 2003). In addition, commenters cited several ''new'' studies of health effects associated with exposure to coarse particles during Asian dust storms (Chen Y-S *et al.*, 2004; Chen and Yang, 2005; Yang C-Y *et al.*, 2005; Chang *et al.*, 2006). Commenters also pointed to ''new'' toxicologic studies such as Schins *et al.* (2004), Veranth (2004, 2006), Becker (2005), Labban *et al.* (2004, 2006), and Steerenberg *et al.* (2006), arguing that toxicological studies do not show consistent differences between urban and rural dusts.

In response to these commenters' first point regarding the epidemiologic studies that were included in the Criteria Document, EPA does not agree with the commenters that these epidemiologic studies provide direct evidence of harm from non-urban or rural crustal material. While EPA acknowledges that crustal particles may have dominated the ambient mix in some of the locations in which these studies were done, it is also the case that these areas are all urban, so the crustal materials in the ambient mix typically would be contaminated by metals, road dust, and other combustion byproducts. At the same time, EPA notes that CASAC cited the studies by Ostro *et al.* (2000, 2003) as suggestive of health effects associated with exposure to rural crustal materials: ''Little is known about the potential toxicity of rural dusts, although the 2000 and 2003 Coachella Valley, CA studies from Ostro *et al.* showed significant adverse health effects, primarily involving exposures to coarse-mode particles arising from

crustal sources' (Henderson, 2005a, p. 4). Thus while EPA does not agree with these commenters that the epidemiologic studies demonstrate that non-urban or rural crustal particles are harmful, at the same time EPA believes the studies do raise credible concerns and suggest the need to be cautious in interpreting the epidemiologic and other evidence.

The EPA agrees with these commenters that the observations of Hefflin *et al.* (1994) suggest it is possible that the lack of mortality effects on dust storm days observed in Schwartz *et al.* (1999) may be due to avoidance behavior. As noted in the proposal (71 FR 2666), there is a possibility that people may reduce their exposure to ambient particles on the most dusty days. This argues for caution in interpreting the results of Schwartz *et al.* (1999) with regard to the potential health effects associated with exposure to natural crustal material.

The EPA acknowledges the limitations on the scientific evidence identified by these commenters regarding the differences in composition and toxicologic effects of urban and rural thoracic coarse particles. As noted in the Criteria Document and Staff Paper, there is clear evidence of toxicity of certain components of thoracic coarse particles, such as metals and endotoxins, as well as evidence that natural crustal materials of geologic origin, such as Mt. St. Helens volcanic ash, may have very little toxicity. There is largely an absence of evidence regarding the presence or absence of toxicologic effects associated with other types of coarse particles in non-urban areas. However, EPA agrees that thoracic coarse particles in non-urban areas may become contaminated with a wide variety of toxic materials (EPA, 2004a, p. 8–344). Clearly, however, crustal material associated with particular locations, such as the dry lakebeds of Owens and Mono Lakes, can be highly contaminated with metals, salts, and other toxic constituents. The EPA agrees with commenters that the potential toxicity of these components is well recognized; however, such locations tend to be isolated and not representative of other locations.

In response to other comments raised by this group of commenters, EPA continues to find it inappropriate to assume that effects observed in occupational studies should be considered representative of effects that would occur at community exposure levels. However, EPA agrees with commenters that the presence of occupational exposure studies demonstrating adverse effects lends further support to a cautious approach in considering revisions to the standards affording protection from thoracic coarse particles. Finally, to the extent that commenters cited new scientific studies that were not considered in the Criteria Document in support of their arguments against a qualified coarse particle indicator, EPA notes that as discussed above in section I.C, EPA it is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review.

Overall, the scientific evidence supports a conclusion that the risks of adverse health effects associated with thoracic coarse particles typically found in urban or industrial areas warrant targeted protection. Although the limited and inconclusive evidence does not support such a conclusion concerning thoracic coarse particles typically found in non-urban or rural areas, it supports a cautious approach concerning thoracic coarse particles. The EPA agrees with all the commenters who pointed to the need for additional research to strengthen the current body of evidence to reduce some of the uncertainties regarding the health effects associated with coarse particles.

In addition to their criticisms of the scientific basis for EPA's proposed indicator, commenters opposed to a qualified indicator also advanced legal and policy arguments against EPA's proposed approach. In particular, commenters criticized the proposal's provision that ''agricultural sources, mining sources, and other similar sources of crustal materials shall not be subject to control in meeting this standard'' (71 FR 2699); a large number of commenters expressed the view that the exclusion is flatly illegal, citing CAA section 101 (a) (3) and case law in support. These commenters also pointed to CASAC's March 21, 2006 letter to the Administrator which stated that EPA had misconstrued the finding of the Committee and that the proposed rule—particularly the source-category exclusions—was not consistent with the Committee's recommendations.

These commenters also stated that EPA had failed to demonstrate that its proposed qualified indicator would protect public health with an adequate margin of safety. Pointing again to the relative paucity of data regarding health effects associated with coarse particles of differing compositions, and the almost complete lack of evidence regarding health effects in rural areas, these commenters expressed the view that EPA must demonstrate affirmatively that the coarse particle standards will ensure an absence of adverse effects on sensitive individuals (American Lung Association, p. 82, citing *Lead Industries Ass'n* v. *EPA,* 647 F.2d 1130, 1153 (D.C. Cir. 1980) and *American Lung Ass'n* v. *EPA,* 134 F.3d 388, 389 (D.C. Cir. 1998)), and that in the absence of evidence, or in the face of significant uncertainty, the CAA requirement to provide an adequate margin of safety obligates EPA to regulate all coarse particles equally (*Lead Industries Ass'n* v. *EPA,* 647 F.2d 1154–55). Some of these commenters pointed to the DC Circuit Court's instruction in ATA III that ''[t]he Act requires EPA to promulgate protective primary NAAQS even where * * * the pollutant's risks cannot be quantified or 'precisely identified as to nature or degree' '' (*ATA III,* 283 F.3d 355, 369 (quoting PM NAAQS, 62 FR 28653)).

Commenters also argued that, under the CAA, EPA is charged with setting ambient standards that are national in scope and application, and that the proposed qualified indicator fails this test. Citing *Whitman,* 531 U.S. at 473, some of these commenters stated that the proposed qualified indicator is a thinly veiled attempt to establish a coarse particle standard that only applies to urban areas, and that it denies citizens in non-urban areas adequate health protection. Several commenters, including numerous Tribes, argued that the qualified indicator, by virtue of depriving non-urban populations of protection from coarse particles, violated principles of environmental justice and the government's Trust Responsibility to Tribes.

Commenters pointed to other concerns as well, many of them focused on specific aspects of the proposed $PM_{10-2.5}$ indicator. First, some commenters stated that the proposed qualified indicator inadequately describes the substance(s) being regulated. These commenters argued that EPA is attempting to establish a composition-based indicator without being able to define adequately which particular chemical or physical components are associated with adverse health effects. Furthermore, commenters pointed out that the indicator was defined in large part through an implementation strategy—i.e. via the placement of monitors—rather than in scientific terms. The Alliance of Automobile Manufacturers expressed concern that the result would be that two sources of coarse particulate matter with similar composition that presumably produce similar health

impacts would be ''given different regulatory treatment based merely on the non-scientific qualifiers established in EPA's indicator'' (Alliance of Automobile Manufacturers, p. 9).

In addition, some commenters pointed to a logical paradox inherent in the proposed $PM_{10-2.5}$ indicator, which is defined to include any ambient mix ''dominated by'' particles from particular types of sources. Commenters noted the potential for the same concentration of ''harmful'' coarse particles—*i.e.* particles from high-density traffic, industrial sources and construction sources—to be regulated differently in different locations depending on what percentage of the ambient mix it constitutes relative to ''crustal'' particles. These commenters stated that the coarse particle standard must provide a consistent level of protection from particles of concern, and that use of a 50 percent domination threshold would result in a variable level of protection from particles of concern.

The EPA also received an extremely large number of comments from diverse stakeholder groups—some of whom conditionally supported a qualified indicator—regarding perceived problems with implementing the proposed $PM_{10-2.5}$ indicator. Many commenters pointed out that EPA failed to specify which source types were included in the broad source category descriptions listed in the indicator. They requested further definition of what could be considered an ''agricultural source,'' a ''mining source,'' or ''other similar sources of crustal material'' (i.e. those sources that would be excluded from control under the proposed standard), and which ''industrial'' and ''construction'' sources were included in the indicator. Furthermore, some commenters inquired about the treatment of sources that were neither explicitly included in nor excluded from the proposed indicator, such as residential and commercial sources. In addition, commenters wondered how EPA or the States would make the determination that one set of sources was ''dominant,'' given the scarcity of knowledge about coarse particle emissions and air quality concentrations, and the lack of suitable source attribution techniques.

Commenters also objected to the proposed five-part test for siting NAAQS-comparable monitors, noting that as written, the monitor siting criteria arbitrarily would prohibit monitoring and regulation of coarse particles outside urbanized areas of 100,000 population, regardless of the presence of large or numerous sources of the types of coarse particles of concern or the nature of the ambient mix. Commenters pointed out that the monitor siting criteria, by virtue of their highly prescriptive role in defining where the pollutant can and cannot be measured, in essence define the indicator itself, and artificially narrow its scope such that in many instances, coarse particles of concern would not be covered by the indicator. These commenters argued that by failing to provide protection from coarse particles of concern in non-urban areas even though the composition of those particles may be identical to that of coarse particles found in large urban areas, the qualified indicator, as EPA proposed to implement it, would be under inclusive. Many Tribes and some other commenters raised concerns about the environmental justice implications of the proposal and stated that EPA had violated its Trust Responsibility toward Tribes, because Tribal lands would be virtually excluded from coverage under the proposed monitor siting criteria, regardless of the mix of particles present. Furthermore, numerous commenters stated that the siting criteria would be impossible to implement, so the criteria undermined the proposed standard on a practical level. Commenters particularly objected to the fifth part of the monitor-site suitability test, which as proposed would require an affirmative demonstration that the ambient mix at the site was dominated by sources of concern, even if all of the other four monitor site-suitability criteria were met. Commenters stated that this demonstration would be impossible to execute due to the lack of suitable data and techniques, undermining the siting of any NAAQS-comparable $PM_{10-2.5}$ monitors.

In response to these perceived problems with the proposed qualified indicator, commenters suggested a number of remedies. A few commenters, mostly industry representatives who preferred that no coarse particle standard be set at the current time, stated that if EPA does set a standard, it should be based on a qualified $PM_{10-2.5}$ indicator, but EPA should fix specific problematic aspects of the proposal (e.g. clarify the definition of included vs. excluded industries). Most commenters, including States, Tribes, and environmental and public health groups, urged EPA to adopt an unqualified $PM_{10-2.5}$ indicator to ensure adequate public health protection and to avoid some of their perceived legal and/or policy issues associated with the qualified indicator. A few of these commenters recommended that EPA utilize the Exceptional Events Rule, proposed on March 10, 2006 (71 FR 12592–12610), to exclude violations caused by rural windblown dust. According to these commenters, this would be consistent with historical practice, because in the past the Natural Events Policy has been applied in many instances to exclude data associated with dust storms and other events from consideration under the PM_{10} standard (see New Mexico Air Quality Bureau, p. 10).

Some commenters advocating an unqualified $PM_{10-2.5}$ indicator stated that, given the limitations on the scientific evidence, and in light of some of the other problems identified with the proposed qualified indicator, EPA should consider retaining the current PM_{10} standards to continue protection from coarse particles. They expressed particular concern about the absence of control in the interim period between the issuance of the final PM NAAQS rule (which as proposed would include the revocation of existing PM_{10} standards in almost all locations) and the completion of designations under a new $PM_{10-2.5}$ standard (which would require deployment of a new monitoring network followed by 3 years of data collection). A few of the commenters advocating the retention of the PM_{10} standards suggested that measurements of PM_{10} could be adjusted by subtracting out $PM_{2.5}$ to avoid double regulating the fine fraction, to satisfy a concern voiced by the D.C. Circuit in *ATA I* (*e.g.*, Alliance of Automobile Manufacturers; also some Tribes and States). Some Tribal, State and local commenters suggested that the 24-hour PM_{10} standard be retained permanently in all areas where the $PM_{10-2.5}$ standard did not apply by virtue of the monitoring requirements, which limited NAAQS-comparable monitors to sites that met the five-point site suitability test outlined in the monitoring rule.

While EPA proposed a qualified indicator that attempted to include certain ambient mixes of thoracic coarse particles and exclude others, EPA's evaluation of the large number of adverse comments received on the proposed qualified indicator has led it to the conclusion that significant caution is warranted in considering such revisions to the scope of the indicator affording public health protection from coarse particles. As discussed below, there are two main issues that arise from consideration of a qualified indicator for thoracic coarse particles: (1) The inability to effectively and precisely identify which coarse particles are included in the indicator

and which are not;[71] and (2) the importance of providing some level of protection from exposure to all thoracic coarse particles while targeting protection at those kinds of thoracic coarse particles for which there is more evidence regarding adverse health effects.

As explained earlier in this section, EPA continues to believe that, from a scientific standpoint, it is appropriate to draw a distinction between the character of the ambient mix of thoracic coarse particles generally found in urban areas and that found in non-urban and, more specifically, rural areas, recognizing that the mix of coarse particles in urban areas is influenced to a relatively greater degree by components from urban mobile and stationary source emissions and that the evidence of health effects associated with exposure to these urban types of coarse particles should not be generalized to other types of coarse particles. In the presence of significant, though limited, evidence of effects in urban areas, it remains EPA's view that a targeted indicator that focuses control on areas with ambient mixes of coarse particles known to be associated with adverse health effects will provide the most certain and substantial public health benefits.

However, EPA also recognizes a number of flaws in the proposed qualified indicator, as noted by numerous commenters, most specifically the difficulties inherent in attempting to effectively and precisely identify the ambient mixes of concern. These include: (1) The artificial constraints on the reach of the indicator resulting from the application of quantitative monitor site-suitability criteria such as the requirement that NAAQS-comparable monitors can only be sited in urbanized areas with minimum 100,000 population even if there is an ambient mix of concern around such an area; and (2) the difficulties associated with attempting to determine with any precision which sources ''dominate'' the ambient mix of coarse particles in different locations.

The quantitative constraints in the monitor site-suitability criteria result in an under-inclusive indicator that fails to include all ambient mixes of concern. Smaller urban and/or industrial areas, for example, would not meet the proposed monitor siting criteria, but might have an ambient mix of concern. Consequently, EPA agrees with commenters that unless the constraints were changed, the proposed indicator would be under-inclusive. The EPA has considered several options to modify the quantitative criteria, including those discussed in the proposal (see Weinstock, 2006). For example, EPA evaluated different possible minimum population thresholds (e.g., 25,000 or 50,000 instead of 100,000) for areas eligible to site NAAQS-comparable monitors, and/or the possibility of adding additional criteria to include areas that do not meet a quantitative population threshold but are dominated by industrial or traffic-oriented sources. Each of these options, however, was found too inflexible to capture all relevant areas or too difficult to implement in practice. Thus, EPA believes that even a more complex set of quantitative criteria would fail to resolve the basic problem inherent in precisely identifying those ambient mixes to include and those to exclude. Based on the data available to us in this review, there still remains a clear risk of failing to capture all ambient mixes of concern, or of capturing ambient mixes that are intended to be excluded from the qualified indicator.

Moreover, as a general matter, the use of a qualified indicator without such objective monitor site-suitability criteria would still present serious problems because it is currently impossible to determine with any precision which sources ''dominate'' the ambient mix in many different locations. Although it may be easy in certain instances to identify an ambient mix dominated by urban and/or industrial sources, in many cases it would be difficult to determine whether that precise ambient mix presents the types of health risks identified in the epidemiologic and other studies. The EPA is currently unable to identify any set of objective criteria or techniques such as chemical air quality speciation or modeling that could be practically employed to ensure adequate inclusion of all areas with particles of concern, and exclusion of areas without such particles.

The EPA is also aware that the legal concerns raised by commenters with regard to the exemption of agricultural and mining sources from control under the standard, and the specific sections of the Clean Air Act that speak to this issue, would require careful consideration if the proposed qualified indicator were to be adopted. The logical paradox noted by commenters is also a flaw in the qualified indicator that would need to be resolved. It is another example of the lack of precision in the use of such a qualified indicator.

After careful consideration of the concerns raised by commenters and the options available, EPA now agrees with commenters that the proposed qualified indicator is fundamentally flawed, because it cannot effectively and precisely identify the ambient mixes of concern and because modifications to the indicator that could rectify this and other problems highlighted by the commenters have not been identified. At the present time, therefore, EPA believes that there is an inherent risk that a qualified indicator would not include all of the ambient mixes of concern which the indicator is intended to capture.

Furthermore, in light of the significant scientific uncertainty surrounding the health effects associated with different ambient mixes of coarse particles, EPA agrees with commenters that the proposed qualified indicator would be insufficiently protective and further concludes that, given the limitations on the evidence regarding the health risks associated with different ambient mixes, some protection from exposure to thoracic coarse particles is warranted in all areas. The EPA recognizes that additional data will be collected and analyzed that will be useful to inform the next review.

The EPA has already set out the reasons for providing protection from exposure to ambient mixes dominated by the types of thoracic coarse particles found in urban or industrial areas. With respect to other ambient mixes, some commenters have argued that the scientific evidence, including epidemiologic, dosimetric, toxicologic, and occupational studies, demonstrates that non-urban mixes of thoracic coarse particles are harmful, and therefore that EPA should maintain an unqualified indicator. Other commenters argue that the evidence demonstrates that non-urban mixes of thoracic coarse particles are benign and therefore EPA should retain a qualified indicator. The EPA disagrees with both of these views regarding the strength of the evidence. The existing evidence is inconclusive with regard to whether or not community-level exposures to thoracic coarse particles are associated with adverse health effects in non-urban areas. In light of this uncertainty and the need for caution in considering the evidence, and recognizing the large population groups potentially exposed to non-urban thoracic coarse particles and the nature and degree of the health effects at issue, it is the judgment of the Administrator that the proper response to this body of evidence is to provide some protection from thoracic coarse particles in all areas. Congress ''specifically directed the Administrator to allow an adequate margin of safety to protect against effects which have not

[71] These concerns apply both to defining the qualified indicator and implementing the standard.

yet been uncovered by research and effects whose medical significance is a matter of disagreement * * * Congress' directive to the Administrator to allow an ''adequate margin of safety'' alone plainly refutes any suggestion that the Administrator is only authorized to set primary air quality standards which are designed to protect against health effects that are known to be clearly harmful.'' *Lead Industries* v. *EPA,* 647 F.2d at 1154–55; see also *American Petroleum Inst.* v. *Costle,* 665 F.2d at 1186 (''in setting margins of safety the Administrator need not regulate only the known dangers to health'').

The Administrator has carefully reviewed the scientific evidence and recommendations contained in the Staff Paper, the advice and recommendations from CASAC, and the public comments received regarding the appropriate indicator for coarse particles. After doing so, the Administrator has decided that it would not be appropriate at this time to revise the indicator for coarse particles by adopting a qualified $PM_{10-2.5}$ indicator, either as proposed or with modifications. At the same time, the Administrator believes it is appropriate to target protection from thoracic coarse particles principally towards those types of coarse particles that have been demonstrated to be associated with significant adverse health effects, specifically urban and industrial ambient mixes of coarse particles.

In general, EPA believes these conclusions regarding the potential health effects associated with thoracic coarse particles, and the conclusion that an unqualified indicator that provides targeted protection is the most appropriate approach for regulating coarse particles, are consistent with views expressed by CASAC. In its June 6, 2005 letter, CASAC expressed the view that it was ''important to qualify the $PM_{10-2.5}$ standard by somehow allowing exceptions for regions where the coarse fraction was composed largely of material that was not contaminated by industrial- or motor vehicle traffic-associated sources. Options discussed by members of the Panel for attempting to achieve this approach included limiting the standard to cover ''all'' urban areas, the judicious siting of monitors with a focus on urban areas, or regulatory exceptions for regions where road dust is not an issue or where rural components dominate the source. *No single option was favored''* (Henderson, 2005a, p. 8, emphasis added). CASAC thus recognized that there were numerous ways to approach the need for targeted protection. In its September 2005 letter responding to the recommendations regarding a qualified $PM_{10-2.5}$ indicator in the final Staff Paper, the PM Panel noted that some members did not favor adoption of a qualified indicator. Moreover, CASAC clearly anticipated the difficulties associated with adopting a qualified $PM_{10-2.5}$ indicator:

> CASAC generally agrees with EPA staff conclusions that thoracic coarse particles in urban areas can be expected to differ in composition from those in rural areas and that evidence of associations with health effects related to urban coarse-mode particles would not necessarily apply to non-urban or rural coarse particles (although it is likely that there will be some overlap of the same contaminants in both areas). Most Panel members concurred that the current scarcity of information on the toxicity of rural dusts makes it necessary for the Agency to base its regulations on the known toxicity of urban-derived coarse particles, and that an urban coarse particle indicator should be specified as $UPM_{10-2.5}$. Other Panel members recommended specifying a national $PM_{10-2.5}$ standard accompanied by monitoring and exceptional-events guidance that emphasized urban influences. Some members also expressed concerns whether EPA would be able to specify a clear definition of ''urban'' to effectively determine in advance the specific conditions in which the standard would (and would not) apply. It is recognized that, as more information on the toxicity of rural dusts is acquired, the name and/or geographical focus of a coarse-particle indicator may need to be reconsidered* * *. There is a paucity of data currently available on health outcomes related to thoracic coarse particles in rural areas and limited information on the composition and toxicity of rural area coarse particles. (Henderson 2005b, p. 4)

CASAC also commented negatively on the proposed qualified indicator, raising concerns about the quantitative criteria for monitor siting and the source exclusions, as well as flagging the need for more information about health effects in non-urban areas (Henderson, 2006, p.4).

The comments and concerns expressed by CASAC are consistent with the difficulties EPA has encountered in attempting to craft a qualified indicator, and the Committee correctly anticipated these difficulties. Furthermore, CASAC's advice is generally consistent with the ultimate decision by the Administrator not to move to a qualified $PM_{10-2.5}$ indicator at present. The practical difficulties and imprecision associated with a qualified indicator, as well as the substantial scientific uncertainty regarding the health effects associated with different components and mixes of coarse particles, the large population groups potentially exposed to non-urban thoracic coarse particles and the nature and degree of the health effects at issue, have convinced the Administrator that it is inappropriate to adopt a qualified $PM_{10-2.5}$ indicator at this time. In the following section, EPA considers what indicator would most appropriately provide the type of targeted but comprehensive protection judged appropriate based on its review of the scientific evidence.

3. Decision Not To Revise PM_{10} Indicator

For reasons discussed in the previous section, in the view of the Administrator it is not appropriate to revise the PM_{10} indicator by replacing it with a qualified indicator for thoracic coarse particles at this time. Based on the scientific evidence already summarized, the Administrator believes it is necessary to maintain some protection from all ambient mixes of thoracic coarse particles, and also to have that level of protection reflect the varying degree of public health concern presented by the different ambient mixes of thoracic coarse particulate matter. This would mean allowing lower ambient concentrations of thoracic coarse particles in urban areas, where the evidence indicates the public health risks to be significant, and higher levels in non-urban areas where the public health concerns are less certain. The difficulty of the task is compounded because there presently is no means of achieving this objective by linking allowable concentrations to specific coarse particle chemical components. As CASAC noted, ''[s]ufficient data are lacking at the present time to set standards [for thoracic coarse particulate matter] based specifically on composition'' (Henderson 2005b, p. 5).

Given these objectives and constraints, EPA carefully considered various possibilities regarding the indicator for coarse particles, including adopting an unqualified $PM_{10-2.5}$ indicator, retaining the existing PM_{10} indicator, and/or retaining the PM_{10} indicator with adjustment to avoid double-counting the PM2.5 fraction. These options are discussed below.

a. Unqualified $PM_{10-2.5}$ Indicator. The EPA evaluated whether an unqualified $PM_{10-2.5}$ indicator would satisfy the goals for public health protection described above. However, if such an indicator were utilized as part of a standard with a single unvarying level, it would not reflect the critical difference in evidence regarding the relative public health risks associated with urban and non-urban thoracic coarse particles. If the level were selected to provide appropriate protection against effects associated

with exposure to the ambient mixes typical of urban or industrial areas, the standard would likely be more stringent than necessary to protect against effects associated with exposure to the ambient mixes in non-urban areas. In the judgment of the Administrator, the evidence warrants a lower ambient concentration of ambient coarse particles in urban areas than in non-urban areas, where the coarse particles are typically from different sources and there is less evidence of public health risk. Conversely, if a less stringent level were adopted on the grounds that there is less certainty that the ambient mix in non-urban areas poses a health risk, then the standard would not provide sufficient protection from the ambient mix found in urban or industrial areas. In both instances the standard would not be requisite overall, *i.e.*, ''not lower or higher than is necessary,'' to protect the public health with an adequate margin of safety. *Whitman*, 531 U.S. at 476.

Arguably this dilemma could be resolved by adopting a standard based on a $PM_{10-2.5}$ indicator with a varying level depending on whether the area is urban or non-urban. However, determining appropriate levels for different kinds of ambient mixes is not feasible at this time. The EPA notes that given the variety of sources contributing to $PM_{10-2.5}$ concentrations in different locations, a wide variety of ''ambient mixes'' are likely to exist, greatly complicating the determination of the appropriate standard level for each location. There is a lack of evidence to support establishing specific quantitative distinctions in level based on variations in coarse particle composition and differential toxicity. In addition, there is insufficient evidence regarding coarse particle composition in different areas to allow for the proper assignment of different standard levels in different locations, and the technical capabilities necessary to make such determinations are currently lacking. Even if EPA tried to assign only two levels, urban and non-urban, the same problems identified earlier with respect to a qualified indicator would apply here, given the inability to effectively and precisely identify different ambient mixes. Therefore, EPA finds that the current state of the science does not provide an adequate basis upon which to establish a $PM_{10-2.5}$ standard with an appropriately varying level. As EPA's new research program produces speciated monitoring data, thereby improving scientific knowledge, revealing more specific and precise information about coarse particle composition and relative toxicity, and about the distribution of ambient coarse particle mixes of varying composition, it will be appropriate in a future review to revisit the option of a $PM_{10-2.5}$ standard with a variable level or a qualified indicator.

b. PM_{10} Indicator. An alternative approach would be to retain PM_{10} as an indicator. The EPA recognizes, as did many commenters, that the D.C. Circuit concluded that EPA's 1997 choice of PM_{10} as the indicator for coarse particles was arbitrary and capricious. *ATA I*, 175 F.3d at 1027, 1054–55. In that case, the court noted the tension between EPA's conclusion that coarse and fine particles are different kinds of particles and pose independent and distinct threats to public health, and its choice to address the public health risks associated with coarse particles indirectly, using an indicator for coarse particles that nonetheless includes both fine and coarse particles. Although EPA adopted PM_{10} as a ''surrogate for coarse fraction particles,'' the court also noted EPA's recognition ''that $PM_{10-2.5}$ would have served as a satisfactory coarse particle indicator.'' With this backdrop, the court evaluated EPA's three bases for selecting PM_{10} as the indicator: (a) That the two epidemiologic studies underlying the standards for coarse particles used PM_{10} rather than $PM_{10-2.5}$ as the indicator; (b) that the PM_{10} standards would work in conjunction with the $PM_{2.5}$ standards ''by regulating the portion of particulate pollution not regulated by the $PM_{2.5}$ standards''; and (c) that a nationwide monitoring network for PM_{10} already existed. *Id.* at 1054.

The court rejected the first two arguments for two interrelated reasons. First, use of PM_{10} as the indicator regulates both fine and coarse particles, contrary to EPA's argument that the PM_{10} indicator would work in conjunction with the $PM_{2.5}$ standard to regulate only the coarse particle fraction of PM_{10}. The court concluded: ''we cannot discern exactly how a PM_{10} standard, instead of a $PM_{10-2.5}$ standard, will work alongside a $PM_{2.5}$ standard to regulate only the coarse fraction of PM_{10}. EPA provides no explanation to aid us in understanding its decision.'' *Id.* at 1054. Second, because the PM_{10} indicator regulates both fine and coarse particles, the amount of coarse particles allowed ''will depend (quite arbitrarily) on the amount of $PM_{2.5}$ pollution in the air.'' *Id.* EPA failed to explain why this result was consistent with its argument that a PM_{10} indicator would increase the likelihood that the standard would achieve the desired level of protection from exposure to coarse particles. The resulting combination of $PM_{2.5}$ and PM_{10} standards would lead to double regulation of fine particles and the potential under-regulation of coarse particles, since the amount of allowable coarse particles would always depend on the amount of fine particles in the air. *Id.* The court rejected the third of EPA's arguments, the pragmatic, administrative convenience of using the existing monitoring network, on the grounds that only factors related to public health can be considered in establishing a NAAQS. *Id.* at 1054–55. In sum, the court rejected EPA's adoption of a PM_{10} indicator as arbitrary because of the inadequacy of the reasons provided by the Agency as support for the decision.

Based on the current review of the scientific evidence, EPA feels it is now appropriate to reconsider utilizing PM_{10} as an indicator for coarse particles. Unlike its view in 1997, EPA views $PM_{10-2.5}$ as an unsatisfactory indicator in this review, for the reasons described in the previous subsection. In addition, EPA is not maintaining, as it did in 1997, that a PM_{10} indicator will work in conjunction with the $PM_{2.5}$ standard to regulate coarse particles exclusively, nor is the Agency justifying its choice of the PM_{10} indicator on grounds of administrative convenience. Instead, after careful consideration, it is the view of the Administrator that the PM_{10} indicator will in fact provide the type of targeted protection from thoracic coarse particles which is justified by the emerging body of scientific evidence, that it will do so more effectively and more appropriately than all other indicators evaluated by EPA during the course of this review, and that the inclusion of $PM_{2.5}$ in the PM_{10} indicator does not over-regulate fine particles or under-regulate coarse particles.

To the contrary, the inclusion of $PM_{2.5}$ in the PM_{10} indicator plays two important roles in effectively providing the kind of targeted health protection called for under the current state of the science. Because the PM_{10} indicator includes both coarse PM (PM10–2.5) and fine PM (PM2.5), the concentration of PM10–2.5 allowed by a PM_{10} standard set at a single level declines as the concentration of $PM_{2.5}$ increases. Thus, the level of coarse particles allowed varies depending on the level of fine particles present. At the same time, $PM_{2.5}$ levels tend to be lower in rural areas and higher in urban areas. EPA, 2005, p. 2–54, and Figures 2–23 and 2–24 at pp. 2–52 and 2–53. Thus, to the extent that higher $PM_{2.5}$ levels lead to a lower allowable level of coarse particles in some areas compared to others, this will occur in precisely those locations—

i.e. urban or industrial areas—where the science has shown the strongest evidence of adverse health effects associated with exposure to coarse particles. The EPA's recent Particle Pollution Report (EPA, 2004b, Figure 5, p. 8) provides evidence that annual average concentrations of $PM_{2.5}$ in selected eastern and western urban areas consistently exceed the annual average levels of $PM_{2.5}$ in nearby rural areas. This means that a PM_{10} standard set at a single, unvarying level will permit, on average, lower levels of coarse particles in urban areas, where $PM_{2.5}$ concentrations tend to be higher. The varying levels of coarse particles allowed by a PM_{10} indicator will therefore target protection in urban and industrial areas where the evidence of adverse health effects associated with exposure to coarse particles is strongest. For the same reason, lower levels of $PM_{2.5}$ lead to a higher allowable level of coarse particles in non-urban areas, again an appropriate result given the inconclusive evidence of health risks associated with coarse particles in these areas. The varying amounts of coarse particles that are allowed in urban vs. non-urban areas under the 24-hour PM_{10} standard, based on the varying levels of $PM_{2.5}$ present, appropriately reflect the differences in the strength of evidence regarding coarse particle effects in urban and non-urban areas.[72]

This result is consistent with our current understanding of the strength of the evidence regarding the toxicity of different ambient mixes of thoracic coarse particles in urban and non-urban or rural areas, and also is in accord with our current understanding of the observed toxicity in urban and industrial areas. As noted in both the proposal and the Criteria Document, the observed toxicity of coarse particles in urban and industrial areas comes from the kind of coarse particles found in these environments, for example direct emissions from industrial sources or materials released to road dust from motor vehicles such as brake and tire wear, as well as from the contamination of coarse particles that can occur. This contamination can come from both mobile and stationary sources. In particular, specific components, such as byproducts of incomplete combustion (*e.g.* polycyclic aromatic hydrocarbons) most commonly emitted from motor vehicles and other sources in the form of $PM_{2.5}$, as well as metals and other contaminants emitted from other anthropogenic sources, appear in higher levels in urban areas (EPA, 2004a, p. 8–344; 71 FR 2665). Many of these contaminants in $PM_{10-2.5}$ come originally from fine particles, which may become attached in the atmosphere or be deposited and mixed into coarse materials on the ground. Thus the greater the concentration of $PM_{2.5}$, with higher levels typically found in urban areas, the greater the level of contamination of coarse particles by fine particles. This contamination increases the potential health risk posed by those coarse particles. For that reason, it is logical to allow lower levels of coarse particles when fine particle concentrations are high. In other words, inclusion of $PM_{2.5}$ in the PM_{10} indicator for purposes of coarse particle protection would appropriately reflect the contribution that contaminants emitted in fine particle form can make to the overall health risk posed by coarse particles.

Moreover, due to the contamination of $PM_{10-2.5}$ by $PM_{2.5}$, use of a PM_{10} indicator will not result in inappropriate double regulation of the $PM_{2.5}$ component. To the extent that use of a PM_{10} indicator would result in any reduction in $PM_{2.5}$ concentrations in an area, this would reduce the potential health risk from coarse particles in the area as well. There is no certainty that the contribution of $PM_{2.5}$ to the health risk associated with exposure to contaminated coarse particles would be appropriately addressed through the fine particle standards alone. Thus, to the extent that the inclusion of the $PM_{2.5}$ fraction in the PM_{10} indicator amounts to double regulation of $PM_{2.5}$, its inclusion is non-duplicative and reasonable: it ensures that this risk of contamination of coarse particles by $PM_{2.5}$ is addressed in the suite of fine and coarse PM standards.

Some commenters nonetheless maintained that the court's opinion in *ATA I* bars use of PM_{10} as an indicator for coarse particles, stressing the court's statement that ''[i]t is the very presence of a separate $PM_{2.5}$ standard that makes retention of the PM_{10} indicator arbitrary and capricious.'' 175 F. 3d at 1054. The EPA disagrees that the *ATA I* decision precludes use of a PM_{10} indicator. The court did not hold that it was unlawful *per se* to use PM_{10} as an indicator for thoracic coarse particles. Instead, the court noted two particular problems—the variable level of allowable concentrations of $PM_{10-2.5}$ and double regulation of $PM_{2.5}$—and found that EPA either failed to address these issues, or provided explanations that were inconsistent and unsupported. *Id.* In large part, the court's decision was an important factor in EPA's close evaluation and subsequent proposal of a qualified $PM_{10-2.5}$ indicator as part of this NAAQS review. See EPA, 2005, p. 1–5. However, EPA now believes that a qualified $PM_{10-2.5}$ indicator is inappropriate, and that an unqualified $PM_{10-2.5}$ indicator is more problematic and less effective than a PM_{10} indicator at providing the requisite level of protection from the varying risks associated with thoracic coarse particles. Indeed, for the reasons described above, PM_{10} is an effective indicator for targeting coarse particles because it provides the desired variability in allowable coarse particle concentrations.

Far from being arbitrary and capricious, inclusion of $PM_{2.5}$ serves two important functions: first, it is the mechanism that provides for the variation in allowable $PM_{10-2.5}$ concentrations, targeting lower allowable levels where there is greater public health concern; and second, to the extent that there is ''double regulation'' of $PM_{2.5}$ by virtue of its inclusion in the PM_{10} indicator (175 F.3d at 1054), regulation of $PM_{2.5}$ via this indicator serves valid, non-duplicative purposes in providing requisite protection from thoracic coarse particles. The EPA also notes that ''double regulation'' of a pollutant, in the context of multiple NAAQS standards, is neither impermissible nor even unusual. For example, there are both annual and 24-hour standards for $PM_{2.5}$, as well as both primary and secondary standards for $PM_{2.5}$. The key is that the different standards reasonably serve different purposes '' they are directed at different effects, or

[72] The EPA recognizes that this relationship is qualitative. That is, the varying coarse particle concentrations allowed under the PM_{10} standard do not precisely correspond to the variable toxicity of thoracic coarse particles in different areas. While currently available information does not allow any more precise adjustment for relative toxicity, EPA believes the standard will generally ensure that the coarse particle levels allowed will be lower in urban areas and higher in non-urban areas. While the allowable levels will vary with location due to differing levels of fine particles, that variability will ultimately be limited by implementation of the $PM_{2.5}$ standards. Areas that do not meet these standards are taking steps to reduce $PM_{2.5}$, Currently, the annual fine particle standard places limits on both the long- and short-term levels of fine particles in a number of cities, particularly in the east and in some California cities. In the long run, this will serve to make the ''headroom'' allowed for thoracic coarse particles (*i.e.* the allowable PM_{10} level minus the corresponding $PM_{2.5}$ concentration) more uniform among cities. The new 24-hour $PM_{2.5}$ standard of 35 $\mu g/m^3$ will promote this same result. It should cause areas that now meet the annual $PM_{2.5}$ standard, but have high 24-hour $PM_{2.5}$ concentrations, to adopt additional controls, further reducing the variability in the ''headroom'' for allowable thoracic coarse particle concentrations. In combination with the annual standard, the revised 24-hour $PM_{2.5}$ standard thus will provide for more consistent allowable levels of thoracic coarse particles in cities under the PM_{10} standard.

are not inconsistent when directed at the same effect—as is the case here.

The EPA also recognizes that selection of PM_{10} as the indicator for thoracic coarse particles differs in some degree from the specific advice provided by CASAC to use a qualified $PM_{10-2.5}$ indicator directed at urban or industrial thoracic coarse particles (71 FR 2665). However, EPA believes that the PM_{10} indicator is consistent with the central thrust of CASAC's advice—to utilize an indicator directed at urban types of coarse particulate matter, given the known toxicity of these particles—because it would generally allow lower levels of $PM_{10-2.5}$ in urban areas. The EPA has also explained why it has rejected a qualified $PM_{10-2.5}$ indicator at this time, and notes that CASAC itself considered multiple ways to achieve some degree of targeted protection and voiced strong objections to the qualified $PM_{10-2.5}$ indicator which the Agency proposed (Henderson, 2006, p. 4). The EPA has carefully considered CASAC's views in making its decision, and believes the final decision is consistent with the critical part of CASAC's advice, *i.e.*, to focus the indicator (and standard) on the type of thoracic coarse particles known to be harmful, which are found in urban and/or industrial environments.

c. Unqualified PM_{10} Indicator, with Adjustment to the $PM_{2.5}$ Component. EPA also solicited comment on an approach that would use PM_{10} as an indicator but subtract out the amount of $PM_{2.5}$ in excess of the 24-hour daily standard for $PM_{2.5}$ to avoid the double regulation of $PM_{2.5}$ in the situations where this would have the most regulatory consequence (71 FR 2673). Specifically, this option would retain the indicator, form and level of the 1987 PM_{10} standard, but on days when the measured concentration of PM_{10} exceeds the level of the standard and the measured concentration of $PM_{2.5}$ exceeds the level of the daily $PM_{2.5}$ standard, the amount of $PM_{2.5}$ in excess of the daily $PM_{2.5}$ standard would be subtracted from the total PM_{10}. A few commenters, including certain industry commenters and several local agencies and Tribes, expressed conditional support for pursuing this approach: though they preferred either no coarse particle standard (in the case of industry commenters) or an unqualified $PM_{10-2.5}$ standard applied nationally (in the case of Tribes or local agencies), they suggested that an adjusted PM_{10} indicator would be an acceptable alternative. This alternative, like an unadjusted PM_{10} indicator, would allow variable ambient concentrations of coarse particles. The net result, however, would be that $PM_{10-2.5}$ levels would be allowed to increase relative to the current PM_{10} standard when $PM_{2.5}$ levels are highest. As explained above, this is the opposite result from that desired from a public health perspective. There should be less allowable coarse particulate matter as $PM_{2.5}$ levels increase because these are the conditions under which $PM_{10-2.5}$ tends to become more contaminated and therefore more harmful. Furthermore, it would essentially relax the level of protection afforded by the current 24-hour PM_{10} standard because it would allow higher total PM_{10} levels on days with high $PM_{2.5}$ levels. As explained below in section III.D.2, EPA believes it is important to maintain the current level of protection from health effects associated with exposure to thoracic coarse particles. For both of these reasons, therefore, EPA rejected this approach.

4. Conclusions Regarding Indicator for Thoracic Coarse Particles

After extensive evaluation of the evidence, the alternatives available to the Agency, the advice and recommendations of CASAC, and all of the public comments, EPA concludes that retaining the PM_{10} indicator will be more effective in providing targeted public health protection than all other options available and, based on the current state of the science, is the most appropriate indicator to protect against the health effects associated with exposure to thoracic coarse particles. Thus, in the judgment of the Administrator, it is appropriate to retain PM_{10} as the indicator for coarse particles at this time. The conclusions that led to this decision can be summarized as follows:

(1) All thoracic coarse particulate matter can deposit in the sensitive regions of the lung of most concern, the tracheobronchial and alveolar regions.

(2) It remains appropriate to provide, to the extent possible, targeted protection from thoracic coarse particles that have been demonstrated to be associated with significant adverse health effects. Urban or industrial ambient mixes of coarse particulate matter dominated by high density vehicular, industrial, and construction emissions are of greatest concern, and should be the focus of protection.

(3) The proposed qualified $PM_{10-2.5}$ indicator was beset by numerous problems. Possible modifications to the qualifications considered by EPA failed to resolve these problems, which stem from the basic inability at this time to effectively and precisely identify which ambient mixes are included in the indicator and which are not.

(4) The evidence of health effects associated with non-urban ambient mixes of coarse particles is limited and inconclusive: in general, the evidence does not demonstrate that community-level exposures in non-urban areas are associated with either the existence or absence of adverse health effects.

(5) In light of the entire body of evidence concerning thoracic coarse particles, and given the potentially serious nature of the health risks posed by at least some thoracic coarse particles and the potential size of the population exposed, it is appropriate to provide some protection for all types of thoracic coarse particles, consistent with the requirement of the Act to allow an adequate margin of safety.

With all of the foregoing considerations in mind, the Administrator judges it appropriate not to revise the current PM_{10} indicator at this time. In the view of the Administrator, the PM_{10} indicator provides the type of targeted variation in allowable coarse particle concentrations that is justified by the emerging body of scientific evidence, while providing some protection in all areas. A decision not to revise the PM_{10} indicator reflects an appropriately cautious approach in two respects. First, it ensures inclusion of all ambient mixes of coarse particles of known concern in the indicator; and second, it addresses the potential that additional scientific research may reveal that non-urban or rural ambient mixes of thoracic coarse particles present public health risks that the evidence does not clearly identify at this time. It is EPA's goal that its new research and speciated monitoring program will produce data to determine what effect differences in particle composition may have on health outcomes. Such results have the potential to provide the kind of certainty and specificity required for making future decisions on indicators for thoracic coarse particles that might incorporate qualifications, such as the proposed qualified indicator related to coarse particles from agriculture and mining.

D. Conclusions Regarding Averaging Time, Form, and Level of the Current PM_{10} Standards

1. Averaging Time

In the last review, EPA retained both 24-hour and annual PM_{10} standards to provide protection against the known and potential effects of short- and long-term exposures to thoracic coarse particles (62 FR 38677–79). That

decision was based in part on qualitative considerations related to the expectation that deposition of thoracic coarse particles in the respiratory system could aggravate effects in individuals with asthma. In addition, quantitative support for retaining a 24-hour standard came from limited epidemiologic evidence suggesting that aggravation of asthma and respiratory infection and symptoms may be associated with daily or episodic increases in PM_{10}, where dominated by thoracic coarse particles including fugitive dust. The decision to retain an annual standard as well was generally based on considerations of the plausibility of the potential build-up of insoluble thoracic coarse particles in the lung after long-term exposures to high levels of such particles.

New information available in this review, discussed above, includes several epidemiologic studies that report statistically significant associations between short-term (24-hour) exposure to $PM_{10-2.5}$ and various morbidity effects and mortality. With regard to long-term exposure studies, while one study conducted in southern California reported a link between reduced lung function growth and long-term exposure to $PM_{10-2.5}$ and $PM_{2.5}$, other such studies reported no associations (EPA, 2005, p. 3–19, 3–23–24). Thus, the Criteria Document concluded that the available evidence does not suggest an association with long-term exposure to $PM_{10-2.5}$ (EPA, 2004a, p. 9–79).

Based on these considerations, the Staff Paper concluded that the newly available evidence continues to support a 24-hour averaging time for a standard intended to control thoracic coarse particles, based primarily on evidence suggestive of associations between short-term (24-hour) exposure and morbidity effects and, to a lesser degree, mortality. Noting the absence of evidence judged to be suggestive of an association with long-term exposures, the Staff Paper concluded that there is no quantitative evidence that directly supports an annual standard, while recognizing that it could be appropriate to consider an annual standard to provide a margin of safety against possible effects related to long-term exposure to thoracic coarse particles that future research may reveal. The Staff Paper observed, however, that a 24-hour standard that would reduce 24-hour exposures would also likely reduce long-term average exposures, thus providing some margin of safety against the possibility of health effects associated with long-term exposures (EPA, 2005, p. 5–61). Based on its review of the Staff Paper, CASAC recommended retention of a 24-hour averaging time and agreed that an annual averaging time is not currently warranted for the coarse particle standard (Henderson, 2005b, p.5).

The EPA received relatively few comments regarding the appropriate averaging time of the coarse particle standard. Most of those who did comment generally supported the retention of a 24-hour, but not annual, averaging time, as proposed. A few of the commenters who concurred with EPA's proposal to revoke the annual standard urged reconsideration of the appropriateness of an annual averaging time in the next PM NAAQS review. Several commenters, however, including a few States and several environmental and public health groups, urged EPA to retain an annual standard as well as a 24-hour standard. The American Lung Association, in particular, stated that EPA had inappropriately ignored evidence of long-term morbidity effects in several studies, including Gauderman *et al.* (2000, 2002) and Avol *et al.* (2001), and had also ignored substantial evidence from European studies as well as the recommendations for an annual PM_{10} standard made by a WHO working group. These commenters argued that an annual standard was requisite to protect public health with an adequate margin of safety.

EPA disagrees that it ignored the evidence that is relevant to evaluating the health effects associated with long-term exposure to thoracic coarse particles. The EPA's assessment, both in this review and the previous review, placed greatest weight on studies that measured $PM_{10-2.5}$ or on studies conducted in areas where it is reasonable to expect the PM_{10} measurements to be dominated by coarse particles (EPA, 2005). By contrast, these commenters have placed inappropriate reliance on studies that measured PM_{10}, and were conducted in Southern California cities (Gauderman *et al.*, 2000, 2002) or in European cities where it is not reasonable to assume that PM_{10} associations are dominated by coarse particles.[73] In such cases, it is difficult to draw meaningful conclusions about the relative role of coarse as opposed to fine particles. The WHO panel recommendations for PM_{10} limits cited by commenters also do not provide any independent scientific justification regarding the need for a separate long-term standard for coarse particles.[74]

The long-term exposure studies of mortality and morbidity that permit comparisons of fine and coarse particles continue to suggest that, at current ambient levels in the US, fine particles are associated with health effects and coarse particles are not.[75] The EPA believes that the $PM_{2.5}$ standards it is establishing in today's notice address the major risk suggested in the PM_{10} studies cited by commenters. To the extent that additional concerns may exist with regard to long-term exposures to coarse particles that have not been fully identified by scientific research, the Staff Paper notes that the short-term standard for coarse particles, which is generally controlling, has and will continue, as a practical matter, to limit such long-term exposures.[76]

After reviewing the available evidence, the Administrator concurs with staff and CASAC recommendations and concludes that the evidence continues to support a 24-hour averaging time for a coarse particle standard, based primarily on evidence suggestive of associations between short-term (24-hour) exposure and morbidity effects and, to a lesser degree, mortality. As noted above, a 24-hour standard would in effect also provide protection against any as yet unidentified potential effects of long-term exposure at ambient levels. Further, the Administrator concludes

[73] The only one of these studies (Gauderman *et al.*, 2000) to include measurements of coarse particles found an association between lung function growth for PM_{10}, $PM_{2.5}$, $PM_{10-2.5}$, NO_2, and acids. The authors were unable to cite any single pollutant as responsible for these results, but they chose not to include measures for coarse particles in their follow-up study (Gauderman *et al.*, 2002). As noted in the 1996 PM Staff Paper, the other major study of lung function and long-term air pollution in children found no associations with coarse particles (EPA, 1996, p. 5–67a).

[74] The WHO panel essentially developed their recommendations for PM_{10} standards by deriving a ratio of fine particles to PM_{10} and adjusting their recommended levels for $PM_{2.5}$ to derive an equivalent PM_{10} metric, for areas that do not yet have access to $PM_{2.5}$ monitors (WHO, 2005, p. 8).

[75] See EPA 2004a, pp. 8–306 to 307 (''no statistically significant associations have been reported between long-term exposure to coarse fraction particles and cause-specific mortality''); pp. 8–313 to 314 (''[t]he recent studies suggest that long-term exposure to fine particles is associated with development of chronic respiratory disease and reduced lung function growth; little evidence is available on potential effects of exposure to coarse fraction particles'').

[76] The Staff Paper analysis of PM_{10} air quality data indicates that the current 24-hour PM_{10} standard is ''controlling'' in virtually every area in the US; that is, virtually all areas that violate the PM_{10} standards violate the 24-hour PM_{10} standard. Some of them may violate the annual PM_{10} standard as well, but (depending on the year) few, if any, areas violate the annual PM without violating the 24-hour PM_{10} standard (EPA, 2005, p. 2–31 to 32). A supplemental analysis in the Response to Comments document shows that for 2003–2005, all of the areas that would violate the annual PM_{10} standard also violate the 24-hour standard.

that an annual coarse particle standard is not warranted at this time. Thus, the Administrator is retaining the 24-hour PM_{10} standard and revoking the annual PM_{10} standard.

2. Level and Form of the 24-Hour PM_{10} Standard

This section summarizes the major considerations that led to the proposed decision regarding the appropriate level and form for the 24-hour standard for thoracic coarse particles, summarizes and addresses public comments on the appropriate level of protection to be provided by the standard, and presents the Administrator's final conclusions regarding the level and form of the 24-hour standard. The proposed level and form for the 24-hour standard for thoracic coarse particles were based primarily on an assessment of studies that measured $PM_{10-2.5}$, as well as studies that measured PM_{10} in areas that were dominated by $PM_{10-2.5}$. Now that the Administrator has concluded that it is appropriate to retain PM_{10} as the indicator for thoracic coarse particles, rather than adopting a $PM_{10-2.5}$ indicator as proposed, the Administrator relied on this same body of studies as the principal basis for determining an appropriate level and form for a standard based on the PM_{10} indicator. Therefore, in this section EPA reviews the basis for its conclusions in the proposal, and then discusses how this evidence informs the choice of level and form for the 24-hour PM_{10} standard.

In considering the available evidence as a basis for setting a 24-hour standard for thoracic coarse particles, the Staff Paper focused on relevant U.S. and Canadian epidemiologic studies showing associations between short-term $PM_{10-2.5}$ concentrations and morbidity and mortality effects, as discussed above in section III.A. As an initial matter, the Staff Paper recognized that these individual short-term exposure studies provide no evidence of clear population thresholds, or lowest-observed-effects levels, in terms of 24-hour average concentrations. As a consequence, this body of evidence is difficult to translate directly into a specific 24-hour standard that would protect against the range of effects that have been associated with short-term exposures to coarse particles.

In considering the evidence, the Staff Paper noted the significant uncertainties and the limited nature of the available evidence. In examining the available evidence to identify a basis for a range of standard levels that would be appropriate for consideration, the Staff Paper focused on the upper end of the distributions of daily $PM_{10-2.5}$ concentrations in the relevant studies in terms of the 98th and 99th percentile values.[77]

In looking first at the morbidity studies that report statistically significant associations with respiratory- and cardiac-related hospital admissions in Toronto (Burnett *et al.*, 1997), Seattle (Sheppard, 2003), and Detroit (Ito, 2003), the 98th percentile $PM_{10-2.5}$ values reported in these studies range from approximately 30 to 36 μg/m³. To provide some perspective on these $PM_{10-2.5}$ levels, the Staff Paper noted that the level of the 24-hour PM_{10} standard was exceeded on only a few occasions during the time periods of the studies in Detroit and Seattle.[78] In the mortality studies that report statistically significant and generally robust associations with short-term exposures to $PM_{10-2.5}$ in Phoenix (Mar *et al.*, 2003) and Coachella Valley, CA (Ostro *et al.*, 2003), the reported 98th percentile values were approximately 70 and 107 μg/m³, respectively. These studies were conducted in areas with air quality levels that did not meet the current PM_{10} standards. In addition, as part of the Six Cities study, Schwartz *et al.* (1996 and reanalysis 2003a) reported a statistically significant association between $PM_{10-2.5}$ and mortality in Steubenville, where the $PM_{10-2.5}$ concentrations were fairly high, with a reported 98th percentile value of 53 μg/m³, although in a second reanalysis, the association did not remain statistically significant (Klemm and Mason, 2003). On the other hand, the Staff Paper noted that no statistically significant mortality associations were reported in a number of other studies, including those in the five other cities that were part of the Six Cities study (Boston, St. Louis, Knoxville, Topeka, and Portage), and in Santa Clara County, CA, Detroit, Philadelphia, and Pittsburgh. With the exception of Pittsburgh, these cities had much lower 98th percentile $PM_{10-2.5}$ values, ranging from 18 to 49 μg/m³. Thus, in mortality studies that reported statistically significant associations, the reported 98th percentile $PM_{10-2.5}$ values were all above 50 μg/m³, and all in areas that exceeded the level of the daily PM_{10} standard, whereas in the mortality studies that reported no statistically significant associations, the reported 98th percentile $PM_{10-2.5}$ values were generally below 50 μg/m³.

In examining the air quality data used in the key morbidity and mortality studies considered in the Staff Paper, EPA recognized that the uncertainty related to exposure measurement error associated with using ambient concentrations to represent area-wide population exposure levels can be potentially quite large. For example, in looking specifically at the Detroit study, the Staff Paper noted that the $PM_{10-2.5}$ air quality values were based on air quality monitors located in Windsor, Canada. While the study authors concluded that these monitors were appropriate for use in exploring the association between air quality and hospital admissions in Detroit, a close examination of air quality levels at Detroit and Windsor sites in recent years led to the conclusion that the statistically significant, generally robust association with hospital admissions in Detroit likely reflects population exposures that may be appreciably higher in the central city area, but not necessarily across the broader study area, than would be estimated using data from the Windsor monitors (EPA, 2005, p. 5–64).

The Staff Paper also looked more specifically at the Coachella Valley mortality study (Ostro *et al.*, 2003), in which data were used from a single monitoring site in one city, Indio, within the study area where daily measurements were available. A close examination of air quality levels across the Coachella Valley suggested that while the association of mortality with $PM_{10-2.5}$ measurements made at the Indio site was statistically significant, a portion of the study population would have been expected to experience appreciably lower ambient exposure levels. In contrast to the Detroit study, air quality data used in the mortality study conducted in Coachella Valley appeared to represent concentrations on the high end of $PM_{10-2.5}$ levels for Coachella Valley communities. On the other hand, a close examination of the air quality data used in the other studies discussed above generally showed less disparity between air quality levels at the monitoring sites used in the studies and the broader pattern of air quality levels across the study areas than that described above in the Detroit and Coachella Valley studies.

The Staff Paper noted that this close examination of air quality information generally reinforced the view that exposure measurement error is potentially quite large in studies focusing on thoracic coarse particles. As

[77] This examination of the evidence is based on air quality information and analyses presented in two staff memos which were part of the materials reviewed by CASAC (Ross and Langstaff, 2005; Ross, 2005).

[78] As shown in air quality data trends reports: for Seattle, *1997 Air Quality Annual Report for Washington State*, p. 17, at *http://www.ecy.wa.gov/pubs/97208.pdf*; for Detroit, Michigan's 2003 Annual Air Quality Report, p. 46, at *http://www.deq.state.mi.us/documents/deq-aqd-air-reports-03AQReport.pdf*.

a consequence, the air quality levels reported in these studies as measured by ambient concentrations at monitoring sites within the study areas are not necessarily good surrogates for population exposures that are likely associated with the observed effects in the study areas or that would likely be associated with effects in other urban areas across the country. The Detroit example suggests that population exposures were probably appreciably underestimated in the Detroit morbidity study, such that the observed effects are likely associated with higher $PM_{10-2.5}$ levels than reported. In contrast, the Coachella Valley mortality study provides an example in which $PM_{10-2.5}$ levels to which the study populations were exposed were probably appreciably overestimated, such that the observed effects may well be associated with lower $PM_{10-2.5}$ levels than reported. At relatively low levels of air quality, population exposures implied by these studies as being associated with the observed effects become more uncertain, suggesting a high degree of caution in interpreting the air quality levels from the group of morbidity studies as a basis for identifying a standard level that would protect against the observed effects. See generally EPA, 2005, pp. 5–65–66.

Taking into account this close examination of the air quality data associated with health effects in these studies, the Staff Paper concluded that this evidence suggests that EPA could consider a standard for urban thoracic coarse particles at a $PM_{10-2.5}$ level at least down to 50 μg/m^3, in conjunction with a 98th percentile form. This view takes into account the conclusion that this evidence is particularly uncertain as to population exposures, especially from the morbidity studies reporting effects at relatively low concentrations, as well as the general lack of evidence of associations from the group of mortality studies with reported concentrations below these levels. *Id.* at p. 5–66.

The Staff Paper also outlined another view that reflected a more cautious or restrained approach to interpreting the limited body of $PM_{10-2.5}$ epidemiologic evidence. This approach would judge that the uncertainties as to population exposures associated with the observed effects in this whole group of studies were too large to permit direct use of the reported effects levels as a basis for setting a specific standard level. Such a judgment would be consistent with concluding that these studies, together with other dosimetric and toxicologic evidence, provide support for retaining standards for thoracic coarse particles at some level to protect against the morbidity and mortality effects observed in the studies, regardless of whether an associated population exposure level can be clearly discerned from the studies.

Based on this more cautious approach, the Staff Paper concluded that it would be reasonable to interpret the available epidemiologic evidence more qualitatively. Considering the available evidence in this way led to the following observations:

(1) The statistically significant mortality associations with short-term exposure to $PM_{10-2.5}$ reported in the Phoenix and Coachella Valley studies were observed in areas that did not meet the current PM_{10} standards.

(2) The statistically significant morbidity associations with short-term exposure to $PM_{10-2.5}$ reported in the Detroit and Seattle studies were observed in areas that exceeded the level of the current 24-hour PM_{10} standard on just a few occasions during the time periods of the studies.

(3) All but one of the statistically significant morbidity and mortality associations with short-term exposure to PM_{10} that were reported in areas in which PM_{10} was dominated by the coarse particle fraction (including Reno/Sparks, NV, Tucson, AZ, Anchorage, AK, and the Utah Valley area) were observed in areas that did not meet the current PM_{10} standards. *Id.* at p. 5–67.

Based on these considerations, the Staff Paper found little basis for concluding that the degree of protection afforded by the current PM_{10} standards in urban areas is greater than warranted, since potential mortality effects have been associated with air quality levels not allowed by the current 24-hour standard, but have not been associated with air quality levels that would generally meet that standard, and morbidity effects have been associated with air quality levels that exceeded the current 24-hour standard only a few times. Further, the Staff Paper found little basis for concluding that a greater degree of protection is warranted in light of the very high degree of uncertainty in the relevant population exposures implied by the morbidity studies. The Staff Paper concluded, therefore, that it is reasonable to interpret the available evidence as supporting consideration of a short-term standard for urban thoracic coarse particles, so as to provide generally ''equivalent'' protection to that afforded by the current 24-hour PM_{10} standard, recognizing that no one $PM_{10-2.5}$ level will be strictly equivalent to a specific PM_{10} level in all areas (EPA, 2005, p. 5–67). Such a standard would likely provide protection against morbidity effects especially in those urban areas where, unlike several of the study areas, PM_{10} is generally dominated by coarse-fraction rather than fine-fraction particles. Such a standard would also likely provide protection against the more serious, but less certain, coarse-particle-related mortality effects observed in some studies, generally at somewhat higher concentrations.

The Staff Paper went on to consider what level for a 24-hour $PM_{10-2.5}$ standard for urban coarse particles would provide an equivalent level of protection to that afforded by the current 24-hour PM_{10} standard. This consideration of a $PM_{10-2.5}$ standard providing generally ''equivalent'' protection reflected a judgment that while the epidemiologic evidence supported establishing a short-term standard for urban thoracic coarse particles at such a generally ''equivalent'' level, the evidence concerning air quality levels of thoracic coarse particles in the studies was not strong enough to provide a basis for changing the level of protection generally afforded by the current PM_{10} standards (EPA, 2005, pp. 5–68–69). The Staff Paper examined various approaches to providing this equivalent level of protection, including establishing a level of 70 μg/m^3 (98th percentile form) for the qualified $PM_{10-2.5}$ standard (*Id.* at 5–67–68), which is what EPA proposed (71 FR 2671).

CASAC generally supported the Agency's proposed range of 50–70 μg/m^3 (98th percentile) for the 24-hour $PM_{10-2.5}$ standard. As noted, the upper end of this range was based on EPA's assessment of a level for an urban coarse particle standard that would provide a generally equivalent level of protection to that afforded by the current PM_{10} standards. The lower end of the range was developed in consideration of an approach that would place greater weight on the effects levels reported in several studies with lower ambient coarse particle concentrations. The CASAC Panel noted that ''there was general agreement among Panel members that Agency staff had presented a reasonable justification for the ranges of levels proposed'' (Henderson 2005b, p. 6).

Relatively few public commenters addressed the issue of whether ''general equivalence'' was an appropriate goal for the level and form of the proposed coarse particle standard. Some commenters, particularly those industry commenters advocating that no coarse

particle standard be adopted,[79] stated that seeking ''equivalence'' to the PM_{10} standard was fundamentally flawed because, in their view: (1) The level of the current PM_{10} standard was not based on coarse particle studies; (2) the proposed standard is not equivalent to the PM_{10} standard; and (3) the court had already declared any standard based directly or indirectly on PM_{10} to be invalid. The EPA agrees that the 1987 PM_{10} standards were designed to protect against the health effects of both fine and coarse particles, and based in part on epidemiological studies that variously measured particles both smaller and larger than PM_{10}. However, the arguments regarding the origin of the 1987 standards as well as commenters' claims about the basis for the PM_{10} standards promulgated in 1997[80] are not relevant to the current review. In determining whether to revise the standards in this review, EPA has examined the degree of protection provided by the current 24-hour PM_{10} standard in light of the quantitative evidence from the expanded epidemiological data base that includes studies using direct $PM_{10-2.5}$ measurements as well as studies using PM_{10} measurements in areas where coarse particles dominate the distribution.

Because as discussed in section III.C.3 above, the Administrator has decided that it is appropriate to retain PM_{10} as the indicator for thoracic coarse particles, there can be no uncertainty as to whether the final standard is equivalent to the current standard, making the commenters' second point above moot. With regard to their third point, for reasons outlined in section III.C.3, EPA believes that it has addressed the concerns raised by the court regarding PM_{10} as an indicator, and in any case, the D.C. Circuit did not address the issue of the level of protection from thoracic coarse particles afforded by the 1997 or 1987 24-hour PM_{10} standard.

Other commenters, particularly environmental and public health groups, disagreed with EPA's proposal to seek an ''equivalent level of protection'' because they believe the scientific evidence mandates a lower level to protect against adverse health effects. These commenters cited studies reviewed in the Staff Paper and noted above, which they claimed showed significant associations between health effects and $PM_{10-2.5}$ concentrations at levels between 30–40 $\mu g/m^3$, and recent decisions by the European Union and the State of California to adopt 24-hour PM_{10} standards of 50 $\mu g/m^3$.

These commenters argued that, even considering EPA's analyses of the uncertainties in the relevant ambient concentration measurements, these studies, particularly those in Atlanta, Seattle, and Toronto and the six-cities study of respiratory symptoms in children (Schwartz and Neas, 2000), demonstrate the need for a more stringent level of protection than that provided by the current standards. These commenters also argued that EPA's approach to determining an equivalent level resulted in less protection than the current standard, even in urban areas. In addition, these commenters pointed to the study review conducted by Brunekreef and Forsberg (2005) and numerous ''new'' studies published too recently for inclusion in the Criteria Document such as Mar *et al.* (2004), Chen Y *et al.* (2005), and Lin *et al.* (2005), as supportive of lower levels.

As noted above, EPA has conducted a careful assessment of the studies cited by commenters[81] from the Staff Paper assessment but reaches substantially different conclusions about their implications for the level of a 24-hour standard for thoracic coarse particles. Based on that assessment, EPA staff recommended consideration of a range of levels for a 24-hour $PM_{10-2.5}$ standard extending from a level equivalent to the current PM_{10} standard down to a level of 50 $\mu g/m^3$, which is clearly above that suggested by these commenters. CASAC found general agreement that the ''staff had presented a reasonable justification'' for this range oflevels. While EPA strongly agrees that the available scientific evidence supports and requires maintaining the level of protection provided by the current 24-hour PM_{10} standard, the limited extent of epidemiological evidence as well as the unusually large uncertainties in measuring exposures to thoracic coarse particles, particularly at lower levels, argue for the more cautious interpretation advocated by EPA staff and CASAC. Because the Administrator has decided to continue the use of PM_{10} as the indicator for coarse particles, commenters' remaining concerns about whether the proposed levels for $PM_{10-2.5}$ are as protective as current standards are no longer relevant.

For reasons summarized in section II.F above, EPA does not believe that standards adopted by the State of California or, by extension, the European Union, which operates under a different legal and policy structure, provide a relevant guide for establishing U.S. National Ambient Air Quality Standards. While EPA agrees that the assessment of Brunekreef and Forsberg (2005) supports separate regulation of fine and coarse particles, these authors make no recommendations with respect to appropriate levels of protection. To the extent that commenters cited ''new'' studies in support of their argument for a more stringent standard to protect against health effects associated with exposure to coarse particles, EPA notes that as in past NAAQS reviews, it is basing the final decisions in this review on the studies and related information included in the PM air quality criteria that have undergone CASAC and public review, and will consider the newly published studies for purposes of decision making in the next PM NAAQS review, as discussed above in section I.C. As evidenced by the uncertainties found in the detailed assessment of key coarse particle studies in the Staff Paper, the kind of assessment and analysis provided by the formal criteria and standards review process is particularly crucial for coarse particle studies that may be relevant to selecting the level of the standard.

After considering the public comments on this issue, EPA continues to believe that the available evidence leads to the conclusion that the degree of protection afforded by the current 24-hour PM_{10} standard is requisite to protect public health with an adequate margin of safety. Having chosen to retain the current indicator for the standard (PM_{10}), and to retain the same degree of protection, it is still necessary to determine the appropriate form and level for the standard. In the context of proposing a standard based on a qualified $PM_{10-2.5}$ indicator, EPA proposed to change the form of the 24-hour standard from a one-expected

[79] As discussed in section III.B.2, these commenters call EPA's interpretation of the key studies discussed in this section into question. EPA's response to the criticisms of use of these studies for standard setting is summarized in section III.B.2 and presented in more detail in the Response to Comments document.

[80] Commenters also suggested that, in promulgating revised PM_{10} standards in 1997, EPA did not consider whether the level of the PM_{10} standards it promulgated was lower than necessary and did not base the levels on coarse particle health effects data. While EPA disagrees with both of these claims—for example, EPA relied on two PM_{10} studies done in areas dominated by coarse particles in selecting the level (62 FR 38679)—this argument is not relevant to this review.

[81] As detailed in the Response to Comment document, EPA had various reasons for not placing primary reliance on the reported air quality results in these studies for selecting a standard level. The Atlanta study (Tolbert *et al,* 2000), found a significant effect for PM_{10}, but not for coarse particles. Both the Six Cities children's diary study (Schwartz and Neas, 2000) and the Toronto hospital admissions study (Burnett *et al.,*, 1997) were conducted for a periods of less than one year, making it difficult to determine what peak value across all seasons in a year might represent exposures of concern.

exceedance form to a 98th percentile form. The 98th percentile form was intended to be consistent with the goal of providing protection equivalent to that afforded by the current 24-hour PM_{10} standard (71 FR at 2671; EPA, 2005, p. 5–68). The few commenters addressing the proposed form supported it, largely because the 98th percentile would provide a more stable statistical basis for making nonattainment determinations. However, some commenters objected to the 98th percentile form because they felt it was inappropriate to allow as many as 21 days over the level of the standard over the course of a three-year period. These commenters argued for a more restrictive form (generally 99th percentile) to ensure the protection of public health with an adequate margin of safety. The EPA notes that the current one-expected-exceedance form of the 24-hour PM_{10} standard allows only three days above the standard over a three-year period.

While EPA generally favors the concentration-based form for short-term standards for reasons noted above, EPA also notes that adopting such a form in this review without changing the level would result in a standard that would not provide the same protection as the current standard, and the level of the standard would have to be adjusted downward to achieve the desired protection. Given the overall decision to provide the same protection as the current standards, the Administrator concludes it is best to retain both the form and the level of the current primary 24-hour PM_{10} standard.

In conclusion, it is EPA's view, as expressed in the Staff Paper and proposal and supported by CASAC and by the available health effects evidence, that the level of protection afforded by the current 24-hour PM_{10} standard of 150 μg/m³, one-expected-exceedance form, continues to be appropriate for the types of thoracic coarse particles typically found in urban or industrial areas. As explained above, mortality effects observed in epidemiologic studies for coarse particles are generally associated with exposure levels that exceed the current standards, and morbidity effects are generally associated with exposure levels that exceeded the current standards on only a few occasions. This suggests the level of protection afforded by the current PM_{10} standards is not greater than warranted. Furthermore, the very high degree of uncertainty in the relevant population exposures implied by the morbidity studies suggests there is little basis for concluding at this time that a greater degree of protection is warranted.

Moreover, as explained above in section III.C.3.b, the PM_{10} indicator provides appropriate variation in allowable coarse particle concentrations in different areas based on the relative proportions of $PM_{2.5}$ and $PM_{10-2.5}$ in the ambient mix. In urban areas where $PM_{2.5}$ concentrations tend to be higher, the current 24-hour PM_{10} standard level of 150 μg/m³ will result in lower allowable levels of $PM_{10-2.5}$. In non-urban areas, the higher allowable levels of coarse particles provided by the current 24-hour PM_{10} standard will also provide appropriate protection of public health, given the body of evidence discussed above. The EPA therefore believes that the level of protection from coarse particles provided by the current 24-hour PM_{10} standard remains requisite to protect public health with an adequate margin of safety. Revising either the level or the form of this standard would alter the current level of protection and therefore would not be appropriate based on the scientific evidence available at this time.

Therefore, after considering the available scientific evidence, the rationale and recommendations contained in the Staff Paper, the advice and recommendations of CASAC, and the public comments received regarding the appropriate level and form for a 24-hour standard intended to afford requisite protection of public health from effects associated with exposure to coarse particles, the Administrator has determined to retain the current level of 150 μg/m³ for the 24-hour PM_{10} standard, and the current one-expected-exceedance form. In the Administrator's judgment, based on the currently available evidence, a standard set at this level remains requisite to protect public health with an adequate margin of safety from the morbidity and possibly mortality effects that have been associated with short-term exposures to thoracic coarse particles in urban or industrial areas, as well as to protect against the potential for risks from exposure to thoracic coarse particles in other areas. The EPA intends to address the considerable uncertainties in the currently available information on thoracic coarse particles as part of the Agency's ongoing PM research program.

E. Final Decisions on Primary PM_{10} Standards

For the reasons discussed above in this section, and taking into account the information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of CASAC, and public comments received on the proposal, the Administrator is retaining the current primary 24-hour PM_{10} standard at the level of 150 μg/m³, which is met when this level is not exceeded more than once per year on average over a three-year period measured at each monitor within an area. The Administrator also is revoking and not replacing the annual PM_{10} standard.

As discussed in more detail in section VI, EPA is promulgating a new reference method (FRM) for measurement of mass concentrations of $PM_{10-2.5}$ in the atmosphere. Although NAAQS for $PM_{10-2.5}$ have not been established by EPA, this new FRM will nevertheless be defined as the standard of reference for measurements of $PM_{10-2.5}$ concentrations in ambient air. This should provide a basis for approving Federal Equivalent Methods (FEMs) and promote the gathering of scientific data to support future reviews of the PM NAAQS. One of the reasons for not finalizing a $PM_{10-2.5}$ standard was the limited body of evidence on health effects associated with thoracic coarse particles from studies that use $PM_{10-2.5}$ measurements of ambient thoracic coarse particle concentrations. If an FRM is available, researchers will likely include $PM_{10-2.5}$ measurements of thoracic coarse particles in health studies either by directly using the FRM or by utilizing approved equivalent methods based on the FRM.

In addition, EPA published elsewhere in today's **Federal Register** a requirement for a new multi-pollutant monitoring network that takes an integrated approach to air quality measurements. One of the required measurements at these multi-pollutant monitoring stations is $PM_{10-2.5}$. The availability of an FRM, and subsequently approved equivalent methods for $PM_{10-2.5}$, will support State and local agencies' efforts to deploy robust methods at these monitoring stations for the measurement of thoracic coarse particles that do not include fine particles. These multi-pollutant monitoring stations will provide a readily available dataset at approximately 75 urban and rural locations for atmospheric and health researchers to compare particle and gaseous air pollutants.

Finally, the $PM_{10-2.5}$ FRM, by definition, provides a reference measurement. Because it is a filter based system, this method can itself be used to provide speciated data and EPA will be issuing guidance to ensure the use of a consistent national approach for speciated coarse particle monitors as soon as possible. The reference measurement from this instrument is

also important in the development of alternative $PM_{10-2.5}$ speciation samplers. We will be developing dichotomous samplers to meet the requirements of SAFETEA–LU. Appropriate guidance to ensure that the use of a consistent national approach for speciated coarse particle monitors will be issued with this method. As discussed in more detail in the final monitoring rule published elsewhere in today's **Federal Register**, EPA is requiring the deployment of $PM_{10-2.5}$ speciation samplers at all 75 multi-pollutant monitoring stations. Such speciation monitoring will help States in developing SIPs and will address a key research need for thoracic coarse particles by providing a better understanding of the chemistry of the collected samples.

IV. Rationale for Final Decisions on Secondary PM Standards

This section presents the Administrator's final decisions regarding the review of the current secondary NAAQS for PM. The existing suite of secondary PM standards, which is identical to the suite of primary PM standards, includes annual and 24-hour $PM_{2.5}$ standards and annual and 24-hour PM_{10} standards. The existing suite of secondary standards is intended to address visibility impairment associated with fine particles,[82] and materials damage and soiling related to both fine and coarse particles. The following discussion of the rationale for the final decisions on revising the secondary PM standards focuses on those considerations most influential in the Administrator's decisions, first addressing visibility impairment as it relates to the $PM_{2.5}$ secondary standards and then addressing the other welfare effects as they relate to both the $PM_{2.5}$ and PM_{10} secondary standards. The other welfare effects considered in this review include effects on vegetation and ecosystems, materials damage and soiling, and climate change.[83]

Sections IV.A and IV.B of the proposal (71 FR 2675–2685) provide a detailed summary of key information contained in the Criteria Document (EPA, 2004a, Chapters 4 and 9) and in the Staff Paper (EPA, 2005, Chapters 6 and 7) on the known and potential welfare effects associated with PM, including PM-related visibility impairment and PM-related effects on vegetation and ecosystems, materials damage and soiling, and climate change, respectively. This information is only briefly outlined in subsections IV.A.1 and IV.B.1 below. Subsequent sections provide a more complete discussion of the Administrator's rationale, having considered the evidence in light of public comments and his final decisions on the primary standards for PM, for his decision to revise the current PM secondary standards by making them identical in all respects to the revised suite of primary PM standards.

A. Visibility Impairment

This section presents the rationale for the Administrator's decision to revise the current secondary $PM_{2.5}$ standards to address PM-related visibility impairment by setting secondary standards identical in all respects to the revised $PM_{2.5}$ primary standards. As discussed below, the rationale includes consideration of: (1) The latest scientific information on visibility effects associated with PM; (2) insights gained from assessments of correlations between ambient $PM_{2.5}$ and visibility impairment prepared by EPA staff; and (3) specific conclusions regarding the need for revisions to the current standards (*i.e.*, indicator, averaging time, form, and level) that, taken together, would be requisite to protect the public welfare from adverse effects of $PM_{2.5}$ on visual air quality.

1. Visibility Impairment Related to Ambient PM

Section IV.A.1 of the proposal (71 FR 2675–2678) outlined key information contained in the Criteria Document and Staff Paper relevant to considering visibility impairment that is related to ambient PM. The information highlighted there summarizes:

(1) The nature of visibility impairment, including trends in visual air quality and the characterization of current visibility conditions, with a particular focus on visibility impairment in urban areas.

(2) Direct, quantitative relationships that exist between ambient PM constituents and light extinction, and thus visibility impairment, based in part on analyses of the extensive new data now available on $PM_{2.5}$ concentrations, primarily in urban areas, that explored factors that have historically complicated efforts to address visibility impairment nationally, including regional differences related to levels of primarily fine particles and to relative humidity.

(3) The impacts of urban visibility impairment on public welfare, based in part on valuation studies of benefits associated with improvements in visibility and in part on recognition of a number of programs, standards, and planning efforts to address visibility impairment, in the U.S. and abroad, that illustrate the value that the public places on improved visibility.

(4) Approaches to evaluating public perceptions and attitudes about visibility impairment, including new methods and tools that have been developed to communicate and evaluate public perceptions of varying visual effects associated with alternative levels of visibility impairment relative to varying pollution levels and environmental conditions.

The summary of the evidence on visibility impairment related to ambient fine particles in the proposal will not be repeated here. The EPA emphasizes that the final decisions on the secondary standards take into account the more comprehensive and detailed discussions of the scientific information on visibility impairment contained in the Criteria Document and Staff Paper.

2. Need for Revision of the Current Secondary $PM_{2.5}$ Standards To Protect Visibility

In 1997, EPA decided to address the effects of PM on visibility by setting secondary standards identical to the suite of $PM_{2.5}$ primary standards, in conjunction with the future establishment of a regional haze program under sections 169A and 169B of the Act (62 FR 38679–83). In reaching this decision, EPA first concluded that PM, especially fine particles, impairs visibility in various locations across the country, including multi-state regions, urban areas, and remote Class I Federal areas (e.g., national parks and wilderness areas). The EPA also concluded that addressing visibility impairment solely through setting more stringent national secondary standards would not be an appropriate means to protect the public welfare from adverse impacts of PM on visibility in all parts of the country. As a consequence, EPA determined that an approach that combined national secondary standards with a regional haze program was the most appropriate and effective way to address visibility impairment (EPA 2005, p. 7–2).

As anticipated in the last review, EPA promulgated a regional haze program in 1999 (65 FR 35713). That program requires States to establish goals for improving visibility in Class I areas and

[82] The Administrator recognized in establishing the levels of the secondary standards for $PM_{2.5}$ that these standards would work ''in conjunction with implementation of a regional haze program'' under Section 169A to provide appropriate national protection against visibility impairment in both urban and non-urban areas (62 FR 38683).

[83] As noted in section I.A above, in establishing secondary standards that are requisite to protect the public welfare from any known or anticipated adverse effects, EPA may not consider the costs of implementing the standards.

to adopt control strategies to achieve these goals. Since strategies to meet these goals are to reflect a coordinated approach among States, multi-state regional planning organizations have been formed and are now developing strategies, to be adopted over the next few years, that will make reasonable progress in meeting these goals.

The initial issue to be addressed in the current review of the secondary PM standards is whether, in view of the information now available, the existing secondary standards should be revised to provide requisite protection from PM-related adverse effects on visual air quality. As discussed in the Criteria Document and Staff Paper, while new research has led to improved understanding of the optical properties of particles and the effects of relative humidity on those properties, it has not changed the fundamental characterization from the last review of the role of PM, and especially fine particles, in visibility impairment. However, extensive new information from visibility and fine particle monitoring networks since the last review has allowed for updated characterizations of visibility trends and current levels in urban areas, as well as Class I areas. As discussed in section IV.A.1.b. of the proposal (71 FR 2676–2677), these new data were a critical component of analyses that better characterized visibility impairment in urban areas and the relationship between visibility and $PM_{2.5}$ concentrations, and led to the finding that $PM_{2.5}$ concentrations can be used as a general surrogate for visibility impairment in urban areas.

Taking into account the most recent monitoring information and analyses, and recognizing that efforts are now underway to address all human-caused visibility impairment in Class I areas through the regional haze program implemented under sections 169A and 169B of the CAA, as discussed above, this review focused on visibility impairment primarily in urban areas. In so doing, given the stronger link between visibility impairment and short-term $PM_{2.5}$ concentrations, EPA gave significant consideration to the question of whether visibility impairment in urban areas allowed by the current 24-hour secondary $PM_{2.5}$ standard can be considered adverse to public welfare.

As discussed in section IV.A.1.c. of the proposal (71 FR 2677–2678), studies in the U.S. and abroad have provided the basis for the establishment of standards and programs to address specific visibility concerns in a number of local areas. These studies (e.g., in Denver, Phoenix, British Columbia) have produced reasonably consistent results in terms of the visual ranges found to be generally acceptable by the participants in the various studies, which spanned from approximately 40 to 60 km in visual range. Standards targeting protection within this range have also been set by the State of Vermont and by California for the Lake Tahoe area, in contrast to the statewide California standard that targets a visual range of approximately 16 km.

In addition to the information available from such programs, photographic representations (simulated images and actual photographs) of visibility impairment are available, as discussed in section IV.A.1.d of the proposal (71 FR 2678), to help inform judgments about the acceptability of varying levels of visual air quality in urban areas across the U.S. In considering these images for Phoenix, Washington, DC, and Chicago (for which $PM_{2.5}$ concentrations are reported), the Staff Paper observed that:

(1) At concentrations at or near the level of the current 24-hour $PM_{2.5}$ standard (65 $\mu g/m^3$), which equates to visual ranges roughly around 10 km (6 miles), scenic views (e.g., mountains, historic monuments), as depicted in these images around and within the urban areas, are significantly obscured from view.

(2) Appreciable improvement in the visual clarity of the scenic views depicted in these images occurs at $PM_{2.5}$ concentrations below 35 to 40 $\mu g/m^3$, which equate to visual ranges generally above 20 km for the urban areas considered (EPA, 2005, p. 7–6).

(3) Visual air quality appears to be good in these images at $PM_{2.5}$ concentrations generally below 20 $\mu g/m^3$, corresponding to visual ranges of approximately 25 to 35 km (EPA, 2005, p. 7–8).

While being mindful of the limitations inherent in using visual representations from a small number of areas as a basis for considering national visibility-based secondary standards, the Staff Paper nonetheless concluded that these observations, together with information from the analyses and other programs discussed above, support revising the current secondary $PM_{2.5}$ standards to improve visual air quality, particularly in urban areas. As discussed below, the Staff Paper recommended the establishment of a new short-term secondary $PM_{2.5}$ standard to provide increased and more targeted protection, primarily in urban areas, from visibility impairment related to fine particles (EPA, 2005, p. 7–12). Based on its review of the Staff Paper, the CASAC advised the Administrator that most CASAC PM Panel members strongly supported the Staff Paper recommendation to establish a new distinct secondary $PM_{2.5}$ standard to protect urban visibility (Henderson, 2005a).[84] Most Panel members considered such a standard to be a reasonable complement to the Regional Haze Rules that protect Class I areas.

In the proposal, the Administrator carefully considered the rationale and recommendations in the Staff Paper, the advice and recommendations from CASAC, and initial public comments on the issue of whether the secondary PM standards should be revised to provide increased PM-related visibility impairment primarily in urban areas. In so doing, the Administrator first recognized that PM-related visibility impairment is principally related to fine particle levels, such that it is appropriate to focus the review on whether the current secondary $PM_{2.5}$ standards should be revised. The Administrator also recognized that perception of visibility impairment is most directly related to instantaneous levels of visual air quality, such that in considering whether the current suite of secondary standards would provide the appropriate degree of protection, he first considered whether the current 24-hour secondary $PM_{2.5}$ standard provides an appropriate level of protection from visibility impairment, principally in urban areas.

In the proposal, the Administrator called attention to the Staff Paper finding that, at concentrations at or near the level of the current 24-hour $PM_{2.5}$ secondary standard (65 $\mu g/m^3$) visual ranges are degraded to a distance of about 10 km (6 miles) and images of scenic views (e.g., mountains, historic monuments, urban skylines) around and within a number of urban areas are significantly obscured from view. Further, the Administrator took note of the various State and local standards and programs that have been established to protect visual air quality beyond the degree of protection that would be afforded by the current 24-hour secondary $PM_{2.5}$ standard. Based on all of the above considerations, the Administrator provisionally concluded that it was appropriate to revise the current 24-hour secondary $PM_{2.5}$ standard to provide an appropriate level of protection from visibility impairment principally in urban areas, in conjunction with the regional haze

[84] A dissenting view was expressed in one Panel member's individual review comments to the effect that any urban visibility standard should be voluntary and locally adopted (Henderson, 2005a).

program for protection of rural air quality in Class I areas.

The majority of commenters who expressed an opinion on the secondary standards, including NESCAUM, STAPPA/ALAPCO, a number of individual States, Tribal associations, and local organizations, and combined comments from various environmental groups supported the position that the secondary $PM_{2.5}$ standards should be revised to increase protection against visibility impairment. A number of these commenters cited the studies and evidence in the PM Staff Paper, as well as the recommendations of CASAC, in support of their views that a more protective standard is warranted. NESCAUM noted that, though monitors in the northeast region do not exceed the current secondary $PM_{2.5}$ standards, their regional haze camera network (CAMNET) routinely documents extremely hazy days obscuring city skylines and views. NESCAUM stated that ''this shows that virtually all of $PM_{2.5}$ effects on visibility in the Northeast are occurring below the present secondary standard, justifying EPA's proposal to revise the existing standard to a more stringent level adequately protective of public welfare'' (NESCAUM, attachment C, p. C–1) In general, EPA agrees with these commenters that the more recent information on visibility values, photographic evidence, and air quality/visibility relationships supports the need to revise the current secondary $PM_{2.5}$ standards.

Other commenters, including UARG, American Public Power Association, and American Electric Power, opposed a revision to strengthen the secondary $PM_{2.5}$ standards at this time. UARG stated that:

> Because the record does not establish that the risks to public welfare from ambient $PM_{2.5}$ are greater, different in character, or more certain than was understood when the present standards were established, the Agency lacks a basis for revising its conclusion that those standards provide the requisite protection of public welfare. (UARG, p. 36).

UARG questioned the usefulness of the photographic images and urban studies of acceptable visibility highlighted in the proposal for determining appropriate levels of urban visibility. They further noted that, for most areas, the annual $PM_{2.5}$ standard would prevent any exceedances of 65 $\mu g/m^3$.

While, as summarized above, the key optical aspects of the relationship between fine particles and visibility have been established for a long time, EPA strongly disagrees that the more recent visibility-related evidence and analyses presented in the Criteria Document and Staff Paper provide no basis for considering more protective $PM_{2.5}$ standards. As discussed in the Staff Paper, one of the key issues in the last review was whether the differences in humidity between East and West complicated the establishment of a nationally uniform $PM_{2.5}$ secondary standard, even for urban areas (EPA, 2005, p. 7–3). With the substantial addition to the air quality and visibility data made possible by the national urban $PM_{2.5}$ monitoring networks, an analysis conducted for this review found that, in urban areas, visibility levels show far less difference between eastern and western regions on a 24-hour or shorter time basis than implied by the largely non-urban data available in the 1997 review (EPA, 2005, p. 7–5). Of equal importance, more recent studies of visibility values conducted for several urbanized areas have found results generally consistent with an earlier study done for the city of Denver. While such studies are still limited in number and subject to uncertainty, they suggest a remarkable consistency in public reaction to urban visibility impairment caused by fine particles (EPA 2005, p. 6–18 to 23).

Furthermore, staff and CASAC agreed on the utility of photographic evidence in characterizing the nature of particle-induced haze. At the level of the current 24-hour $PM_{2.5}$ standard, the potential subtleties associated with alternative photographic views alluded to by UARG would be obscured by the density of the accompanying haze, which would restrict the distance of the farthest discernable dark objects to only 6 miles and greatly reduce the contrast for objects at significantly shorter distances. Although, as suggested by these commenters, the annual standard serves to limit excursions above the level of the current 24-hour standard, particularly in eastern urban areas, continuation of the current 24-hr $PM_{2.5}$ standard would permit a large number of exceedances of this level especially in some western urban areas, even when the standard is just attained. In summary, contrary to the views of this set of commenters, EPA believes that the combination of new insights from air quality analyses, the standards and studies developed to address urban visibility in several areas, as well as an evaluation of the photographic evidence, supports the need to revise the current secondary $PM_{2.5}$ standards.

Having considered the evidence and analysis of visibility and fine particles in the Criteria Document and Staff Paper, the advice and recommendations of the CASAC, as well as the public comments on this issue, the Administrator concludes that it is appropriate to revise the current secondary $PM_{2.5}$ standards to provide increased protection from visibility impairment in urban areas. Consistent with the considerations and rationale summarized above and in the proposal, the Administrator believes that emphasis should be placed on revisions to the current 24-hour $PM_{2.5}$ standard that would provide an appropriate level of protection against visibility impairment principally in urban areas, in conjunction with the regional haze program for protection of visual air quality in Class I areas.

3. Indicator of PM for Secondary Standard To Address Visibility Impairment

As discussed in the Staff Paper, fine particles contribute to visibility impairment directly in proportion to their concentration in the ambient air. Hygroscopic components of fine particles, in particular sulfates and nitrates, contribute disproportionately to visibility impairment under high humidity conditions. Particles in the coarse mode generally contribute only marginally to visibility impairment in urban areas. In analyzing how well $PM_{2.5}$ concentrations correlate with visibility in urban locations across the U.S. (see EPA, 2005, section 6.2.3), the Staff Paper concluded that the observed correlations are strong enough to support the use of $PM_{2.5}$ as the indicator for such standards. More specifically, clear correlations exist between 24-hour average $PM_{2.5}$ concentrations and reconstructed light extinction, which is directly related to visual range. These correlations are similar in the eastern and western regions of the U.S. Further, these correlations are less influenced by relative humidity and more consistent across regions when $PM_{2.5}$ concentrations are averaged over shorter, daylight time periods (e.g., 4 to 8 hours). Thus, the Staff Paper concluded that it is appropriate to use $PM_{2.5}$ as an indicator for standards to address visibility impairment in urban areas, especially when the indicator is defined for a relatively short period of daylight hours. Based on its review of the Staff Paper, most CASAC Panel members endorsed a $PM_{2.5}$ indicator for a secondary standard to address visibility impairment (Henderson, 2005a, p. 9).

The Administrator provisionally concurred with the EPA staff and CASAC recommendations, and proposed that $PM_{2.5}$ should be retained as the indicator for fine particles as part

of a secondary standard to address visibility protection. No commenters disputed the appropriateness of continuing to use $PM_{2.5}$ as the indicator for fine particle secondary standards to address visibility impairment.

Having considered the scientific information discussed in the proposal and summarized above, as well as the recommendations of the staff and CASAC and the public comments on this issue, the Administrator concludes that $PM_{2.5}$ should be retained as the indicator for fine particles as part of a secondary standard to address visibility protection.

4. Averaging Time of a Secondary $PM_{2.5}$ Standard for Visibility Protection

As discussed in the Staff Paper, averaging times from 24 to 4 hours were considered for a revised standard to address visibility impairment. Within this range, clear and similarly strong correlations were found between visibility and 24-hour average $PM_{2.5}$ concentrations in eastern and western areas, while somewhat stronger correlations were found with $PM_{2.5}$ concentrations averaged over a 4-hour time period. In general, correlations between $PM_{2.5}$ concentrations and light extinction were found to be generally less influenced by relative humidity and more consistent across regions as shorter, sub-daily averaging times, within daylight hours from approximately 10 a.m. to 6 p.m., were considered. The Staff Paper concluded that an averaging time from 4 to 8 hours, generally within this daylight time period, should be considered for a standard to address visibility impairment.

In reaching this conclusion, the Staff Paper recognized that the $PM_{2.5}$ Federal Reference Method (FRM) monitoring network provides 24-hour average concentrations, and, in some cases, on a third- or sixth-day sample schedule, such that implementing a standard with a less-than-24-hour averaging time would necessitate the use of continuous monitors that can provide hourly time resolution. Given that the data used in the Staff Paper analysis discussed above were from commercially available $PM_{2.5}$ continuous monitors, such monitors clearly could provide the hourly data that would be needed for comparison with a potential visibility standard with a less-than-24-hour averaging time.

Most CASAC Panel members supported the Staff Paper recommendation of a sub-daily (4 to 8 daylight hours) averaging time, finding it to be an innovative approach that strengthens the quality of the $PM_{2.5}$ indicator for visibility effects by targeting the driest part of the day (Henderson, 2005a, p. 9). In its advice to the Administrator, CASAC noted an indirect but important benefit to advancing EPA's monitoring program goals that would come from the direct use of hourly data from a network of continuous $PM_{2.5}$ mass monitors.

In considering the Staff Paper recommendation and CASAC's advice, the Administrator provisionally concluded that averaging times from 24 hours to 4 daylight hours would represent a reasonable range of choices for a standard to address urban visibility impairment. A 24-hour averaging time could be selected and applied based on the extensive data base currently available from the existing $PM_{2.5}$ FRM monitoring network, whereas a sub-daily averaging time would necessarily depend upon an expanded network of continuous $PM_{2.5}$ mass monitors. While the Administrator agreed that broader deployment of continuous $PM_{2.5}$ mass monitors is a desirable goal, working toward that goal does not depend upon nor provide an appropriate basis for setting a sub-daily standard. The Administrator believed that it was appropriate to evaluate averaging time in conjunction with reaching decisions on the form and level of a standard. Public comments on these issues, as well as the rationale for the final decisions on averaging time, form, and level of the secondary standards, are presented in the following section.

5. Final Decisions on Secondary $PM_{2.5}$ Standards for Visibility Protection

In considering $PM_{2.5}$ standards that would provide an appropriate level of protection against PM-related impairment of visibility primarily in urban areas, the Administrator took into account the results of the public perception and attitude surveys in the U.S. and Canada, State and local visibility standards within the U.S., and visual inspection of photographic representations of several urban areas across the U.S. summarized in section IV.A.1 of the proposal. In the Administrator's judgment, these sources provide useful but still quite limited information on the range of levels appropriate for consideration in setting a national visibility standard primarily for urban areas, given the generally subjective nature of the public welfare effect involved. In considering alternative forms for such standards, the Administrator took into account the same general factors that were considered in selecting an appropriate form for the 24-hour primary $PM_{2.5}$ standard (as discussed above in section II.E.1), as well as additional information on the percent of areas not likely to meet various alternative $PM_{2.5}$ standards, consistent with CASAC advice to consider such information (Henderson, 2005a, p. 10).

In considering the remaining elements of a secondary $PM_{2.5}$ standard (averaging time, form, and level) for purposes of the proposal, the Administrator looked to the rationale presented in the Staff Paper and to CASAC's advice and recommendations for such a standard. Based on photographic representations of varying levels of visual air quality, public perception studies, and local and State visibility standards, as discussed above, the Staff Paper concluded that 30 to 20 $\mu g/m^3$ $PM_{2.5}$ represents a reasonable range for a national visibility standard primarily for urban areas, based on a sub-daily averaging time. The upper end of this range is below the levels at which the illustrative scenic views are significantly obscured, and the lower end is around the level at which visual air quality generally appears to be good based on observation of the illustrative views. Analyses of 4-hour average $PM_{2.5}$ concentrations indicate that this concentration range can be expected generally to correspond to median visual ranges in urban areas within regions across the U.S. of approximately 25 to 35 km (see EPA, 2005, Figure 7–1).[85] This range of visual range values is bounded above by the visual range targets selected in specific areas where State or local agencies placed particular emphasis on protecting visual air quality.

In considering a reasonable range of forms for a $PM_{2.5}$ standard within this range of levels, the Staff Paper concluded that a concentration-based percentile form is appropriate for the same reasons as those discussed in section II.F.1 above (on the form of the 24-hour primary $PM_{2.5}$ standard). The Staff Paper also concluded that the upper end of the range of concentration percentiles should be consistent with the percentile used for the primary standard, which was proposed to be the 98th percentile, and that the lower end of the range should be the 92nd percentile, which represents the mean of the distribution of the 20 percent most impaired days, as targeted in the regional haze program (EPA, 2005, p. 7–11 to 12).

In its advice to the Administrator, the CASAC Panel recognized that it is difficult to select any specific level and

[85] The Staff Paper notes that a standard set at any specific $PM_{2.5}$ concentration will necessarily result in visual ranges that vary somewhat in urban areas across the country, reflecting the variability in the correlations between $PM_{2.5}$ concentrations and light extinction (EPA, 2005, p. 7–8).

form based on currently available information (Henderson, 2005a, p. 9). Some Panel members felt that the range of levels recommended in the Staff Paper was on the high side, but recognized that developing a more specific (and more protective) level in future reviews would require updated and refined public visibility valuation studies, which CASAC strongly encouraged the Agency to support prior to the next review. With regard to the form of the standard, the recommendations in the final Staff Paper reflected CASAC's advice to consider percentiles in the range of the 92nd to the 98th percentile. Some Panel members recommended considering a percentile within this range in conjunction with a level toward the upper end of the range recommended in the Staff Paper.[86]

Based on the above considerations, for purposes of the proposal the Administrator believed that it was appropriate to first consider the level of protection that would be afforded by the proposed suite of primary $PM_{2.5}$ standards (71 FR 2681). The limited and uncertain evidence currently available for use in evaluating the appropriate level of protection suggested that a cautious approach was warranted in establishing a distinct secondary $PM_{2.5}$ standard to address visibility impairment. While significantly more information is available since the last review concerning the relationship between fine PM levels and visibility across the country, there is still little available information for use in making the relatively subjective value judgment needed in selecting the appropriate degree of protection to be afforded by such a standard. Given this, the Administrator first evaluated the level of protection that the proposed primary $PM_{2.5}$ standards would likely provide, and then determined whether the available evidence warranted adopting a standard with a different level, form, or averaging time.

In comparing the extent to which the proposed suite of primary standards would require areas across the country to improve visual air quality with the extent of increased protection likely to be afforded by a standard based on a sub-daily averaging time, the Administrator looked to an analysis of the predicted percent of areas not likely to meet various alternative secondary and primary $PM_{2.5}$ standards (EPA, 2005, Tables 7A–1 and 5B–1(a)[87]). In so doing, the Administrator observed that the predicted percent of counties with monitors not likely to meet the proposed suite of primary $PM_{2.5}$ standards (i.e., a 24-hour standard set at 35 μg/m³, with a 98th percentile form, and an annual standard of 15 μg/m³) was actually somewhat greater (27 percent) than the predicted percent of counties with monitors not likely to meet a sub-daily secondary standard with an averaging time of 4 daylight hours, a level toward the upper end of the range recommended in the Staff Paper (e.g., up to 30 μg/m³), and a form within the recommended range (e.g., around the 95th percentile) (24 percent). A similar comparison was seen in considering the predicted percentages of the population living in such areas.

Considering the evidence in light of these comparisons, the Administrator provisionally concluded that revising the current secondary 24-hour standard for $PM_{2.5}$ to be identical to the proposed revised primary $PM_{2.5}$ standard and retaining the current annual secondary $PM_{2.5}$ standard was a reasonable policy approach to addressing visibility protection primarily in urban areas. Consistent with CASAC's recommendation, the Administrator also solicited comment on a sub-daily (4- to 8-hour averaging time) secondary $PM_{2.5}$ standard.

In additional comments responding to EPA's proposed revision of the secondary $PM_{2.5}$ standards for visibility protection (71 FR 2675–2781), the CASAC requested that a sub-daily standard to protect visibility be favorably reconsidered (Henderson, 2006, p. 2). As noted above, most of the CASAC Panel recommended a sub-daily standard for $PM_{2.5}$ with a level in the 20 to 30 μg/m³ range for a four- to eight-hour (4–8 hr) mid-day time period with a 92nd to 98th percentile form. The CASAC members noted three cautions regarding the Agency's proposed reliance on a secondary $PM_{2.5}$ standard identical to the proposed 24-hour primary $PM_{2.5}$ standard (*Id.* at pp. 5–6):

(1) They noted that the $PM_{2.5}$ mass measurement is a better indicator of visibility impairment during daylight hours, when humidities are low; the sub-daily standard more clearly matches the nature of visibility impairment, whose adverse effects are most evident during the daylight hours; using a 24-hour standard as a proxy introduces error and uncertainty in protecting visibility; and sub-daily standards are used for other NAAQS and should be the focus for visibility.

(2) They noted that CASAC and its monitoring subcommittees have repeatedly commended EPA's initiatives promoting the introduction of continuous and near-continuous PM monitoring, and that expanded deployment of continuous $PM_{2.5}$ monitors is consistent with setting a sub-daily standard to protect visibility.

(3) They cautioned that the analysis showing a similarity between percentages of counties not likely to meet what they considered to be a lenient 4- to 8-hour secondary standard and a secondary standard identical to the proposed 24-hour primary standard is a numerical coincidence that is not indicative of any fundamental relationship between visibility and health.

The CASAC Panel further stated that ''visual air quality is substantially impaired at $PM_{2.5}$ concentrations of 35 μg/m³'' and that ''it is not reasonable to have the visibility standard tied to the health standard, which may change in ways that make it even less appropriate for visibility concerns.'' (*Id.* at p. 6.)

Many of the public commenters who supported a more stringent visibility standard also supported the more specific EPA staff and CASAC recommendations and urged EPA to adopt a sub-daily (4- to 8-hour averaging time) $PM_{2.5}$ standard to address visibility impairment, within the range of 20 to 30 μg/m³ and with a form within the range of the 92nd to 98th percentile. In general, these commenters based their recommendations on the same studies, analyses, and considerations presented in the Staff Paper and in section IV.A of the proposal.[88]

EPA agrees with several of the key technical points made in CASAC's original recommendations and their request for reconsideration. The Administrator recognizes that there is a significant body of data and information indicating that a sub-daily standard has

[86] Some CASAC Panel members also recommended that such a standard be implemented in conjunction with an ''exceptional events'' policy so as to avoid having non-compliance with the standard be driven by natural source influences such as dust storms and wild fires (Henderson, 2005a).

[87] The information in these Tables is based on analysis of 2001–2003 air quality data, including 562 counties with FRM monitors that met specific data completeness criteria for developing predicted percentages of counties not likely to meet the suite of primary $PM_{2.5}$ standards and 168 counties with continuous $PM_{2.5}$ monitors that met less restrictive data completeness criteria for developing predicted percentages for a 4-hour secondary $PM_{2.5}$ standard.

[88] The American Lung Association *et al.* disagreed with the Administrator's view that the secondary standards should be focused primarily on providing protection in urban areas, with protection of Class I areas provided by the Regional Haze Rule. These commenters suggested that EPA should not rely on the regional haze program and must set national standards to protect all areas. As discussed in the Response to Comments document, EPA believes that this issue was settled in *ATA I.* (*See* 175 F.3d at 1056–1057.)

strong technical merit. The fine particle/visibility relationship is most consistent across regions for shorter averaging times during the daylight hours, when humidity tends to be lowest. The EPA also agrees that visibility impairment has the greatest impact on public welfare during the daylight hours, but notes that daylight is not limited to a four to eight hour period.

The Administrator believes, however, that it is appropriate to consider the protection the revised suite of primary $PM_{2.5}$ standards would provide against adverse effects on public welfare. The analysis summarized above found that the relative protection provided by the proposed primary standards was equivalent or more protective than several of the 4-hour secondary standard alternatives in the range recommended by the Staff Paper and CASAC. Given the limitations in the underlying studies and the subjective nature of the judgment required, the Administrator continues to believe that caution is warranted in establishing a distinct secondary standard for visibility impairment. Contrary to commenters who recommended a distinct standard providing greater protection, in this case, the Administrator does not believe that these studies warrant adopting a secondary standard that would provide either more or less protection against visibility impairment in urban areas than would be provided by secondary standards set equal to the proposed primary $PM_{2.5}$ standards. While EPA agrees that the use of 24-hour and annual averages will result in more variability in visibility across urban areas, as the Staff Paper notes, any $PM_{2.5}$ secondary standard would result in some variability in protection in different locations (EPA, 2005, p. 7–8).

While, as noted above and in the proposal, the Administrator agrees with CASAC's point that broader deployment of continuous $PM_{2.5}$ mass monitors is a desirable goal, working toward that goal does not depend upon nor provide an appropriate basis for setting a sub-daily standard. Moreover, pursuant to CASAC recommendations, EPA is today issuing modifications to the $PM_{2.5}$ reference and equivalent methods that will encourage the certification and deployment of more continuous monitors (in a separate document published in today's **Federal Register**). With respect to the third CASAC comment summarized above, EPA agrees that the result of the analysis showing a similarity in the percentages of counties not likely to meet the revised 24-hour primary $PM_{2.5}$ standard or a sub-daily standard set toward the upper end of the range of protectiveness recommended by CASAC is not indicative of any fundamental relationship between visibility and public health. However, EPA does not believe that this coincidental similarity weighs against considering making the secondary standard identical to the revised primary standard.

Having considered the evidence, the advice of CASAC, and public comments, the Administrator believes that revising the current secondary $PM_{2.5}$ standards to be identical to the revised suite of primary $PM_{2.5}$ standards adopted in today's notice is a reasonable policy approach to addressing visibility impairment primarily in urban areas. The current annual and revised 24-hour secondary $PM_{2.5}$ standards will result in improvements in visual air quality in as many or more urban areas across the country as would the alternative approach of setting a sub-daily standard consistent with the upper portion of the ranges recommended by CASAC. This approach recognizes the substantial limitations in the available hourly air quality data and in available studies of public perception and attitudes with regard to the acceptability of various degrees of visibility impairment in urban areas across the country. Given these limitations, the Administrator believes that a distinct secondary standard with a different averaging time, level, or form is not warranted at this time, because the available evidence does not support a decision to achieve a level of protection different from that provided by the revised suite of primary standards, and because no further change in averaging time, level, or form appears needed to achieve a comparable level of protection. A decision in this review to make secondary standards equivalent in all respects to the primary standards, as revised, does not limit the ability of the Agency to establish a distinct secondary standard in the future if and when the underlying evidence indicates that it is appropriate. Further, the Administrator notes that continuing to advance the use of continuous $PM_{2.5}$ monitors is not dependant on establishing a sub-daily secondary $PM_{2.5}$ standard.

The Administrator believes that any secondary NAAQS for visibility protection should be considered in conjunction with the regional haze program as a means of achieving appropriate levels of protection against PM-related visibility impairment in urban, non-urban, and Class I areas across the country. Programs implemented to meet the national primary standards can be expected to improve visual air quality not just in urban areas but in surrounding non-urban areas as well; similarly, programs now being developed to address the requirements of the regional haze rule established for protection of visual air quality in Class I areas can be expected to improve visual air quality in surrounding areas as well. The Administrator further believes that the development of local programs continues to be an effective and appropriate approach to provide additional protection for unique scenic resources in and around certain urban areas that are highly valued by people living in those areas.

Based on all of the considerations discussed above, the Administrator concludes that it is appropriate to revise the current secondary $PM_{2.5}$ standards to be identical in all respects to the revised suite of primary $PM_{2.5}$ standards adopted in today's notice to provide an appropriate level of visibility protection primarily in urban areas.

B. Other PM-Related Welfare Effects

In considering the currently available evidence on non-visibility PM-related welfare effects, the Staff Paper noted that there was much information linking ambient PM to potentially adverse effects on vegetation and ecosystems and on materials damage and soiling, and on characterizing the role of atmospheric particles in climatic and radiative processes. However, given the evaluation of this information in the Criteria Document and Staff Paper, which highlighted the substantial limitations in the evidence, especially the lack of evidence linking various effects to specific levels of ambient PM, the Administrator provisionally concluded in the proposal that the available evidence did not provide a sufficient basis for establishing distinct secondary standards for PM based on any of these effects alone.

In the proposal, the Administrator also addressed the question whether reductions in PM likely to result from the current secondary PM standards, or from the range of revised primary PM standards, would provide appropriate protection against any of these PM-related welfare effects. As discussed below, these considerations included the latest scientific information characterizing the nature of these non-visibility PM-related effects and judgments as to whether revision of the current secondary standards is appropriate based on that information.

1. Evidence of Non-Visibility Welfare Effects Related to PM

Particulate matter contributes to adverse effects on a number of welfare effects categories other than visibility impairment, including vegetation and

ecosystems, soiling and materials damage, and climate. These welfare effects result predominantly from exposure to excess amounts of specific chemical species, regardless of their source or predominant form (particle, gas, or liquid). Reflecting this fact, the Criteria Document concluded that regardless of size fraction, particles containing nitrates and sulfates have the greatest potential for widespread environmental significance. The nature of these welfare effects is discussed in the Criteria Document (Chapters 4 and 9) and Staff Paper (Chapter 6) and summarized in section IV.B.1 of the proposal. The information highlighted there includes:

(1) PM-related effects on vegetation, specifically those associated with excess levels of particulate nitrate and sulfate in acidifying deposition to foliage, leading to accelerated weathering of leaf cuticular surfaces; increased permeability of leaf surfaces to toxic materials, water, and disease agents; increased leaching of nutrients from foliage; and altered reproductive processes—all which serve to weaken trees so that they are more susceptible to other stresses (e.g., extreme weather, pests, pathogens).

(2) PM-related effects on ecosystems, specifically those resulting from the nutrient or acidifying characteristics of deposited PM on both terrestrial and aquatic ecosystems, which contribute to adverse impacts on essential ecological attributes such as species shifts, loss of diversity, impacts to threatened and endangered species and alteration of native fire cycles.

(3) Characterization of ecosystem exposure to PM deposition, specifically the currently available deposition monitoring network and the lack of sufficient long-term monitoring of ecosystem response needed for PM-related ecological risk assessment.

(4) The critical loads concept and its applicability as an assessment tool in the context of the PM secondary NAAQS review.

(5) PM-related effects on materials, specifically the physical damage caused mainly by deposited particulate nitrates and sulfates and the impaired aesthetic qualities due to soiling caused mainly by particles consisting primarily of carbonaceous compounds.

(6) PM-related effects on climate, specifically through scattering and absorption of radiation by ambient particles, as well as effects on the radiative properties of clouds through changes in the number and size distribution of cloud droplets, and by altering the amount of ultraviolet solar radiation (especially UV–B) penetrating through the atmosphere to ground level.

2. Need for Revision of the Current Secondary PM Standards To Address Other PM-Related Welfare Effects

At the time of proposal, in considering the currently available evidence on each type of PM-related welfare effects discussed above, the Administrator noted that there was much information linking the sulfur- and nitrogen-containing components of ambient PM to potentially adverse effects on ecosystems and vegetation, as well as links between PM and its constituents and materials damage and soiling, as well as climatic and radiative processes. However, after reviewing the extent of relevant studies and other information available since the 1997 review of the PM standards, which highlighted the substantial limitations in the evidence, especially with regard to the lack of evidence linking various effects to specific levels of ambient PM, the Administrator concurred with conclusions reached in the Staff Paper and by CASAC (Henderson, 2005a) that the available data do not provide a sufficient basis for establishing distinct secondary PM standards based on any of these non-visibility PM-related welfare effects.

While recognizing that PM-related impacts on vegetation and ecosystems and PM-related soiling and materials damage are associated with chemical components in both fine and coarse-fraction PM, the Administrator provisionally concluded that sufficient information was not available at this time to consider either an ecologically based indicator or an indicator based distinctly on soiling and materials damage, in terms of specific chemical components of PM. Further, consistent with the rationale and recommendations in the Staff Paper, the Administrator agreed that it was appropriate to continue control of ambient fine and coarse-fraction particles, especially long-term deposition of particles such as particulate nitrates and sulfates that contribute to adverse impacts on vegetation and ecosystems and/or to materials damage and soiling. The Administrator also agreed with the Staff Paper that the available information did not provide a sufficient basis for the development of distinct secondary standards to protect against such effects beyond the protection likely to be afforded by the proposed suite of primary PM standards. In considering those proposed standards in combination, including the proposed more protective 24-hour standard for $PM_{2.5}$ and the proposed 24-hour standard for $PM_{10-2.5}$, which was intended to provide an equivalent degree of protection to the current PM_{10} standards in areas where the proposed $PM_{10-2.5}$ indicator would apply (which tend to be more densely populated areas where materials damage would be of greater concern), the Administrator believed that this proposed suite of standards would afford at least the degree of protection as that afforded by the current secondary PM standards.

Finally, the Administrator believed that such standards should be considered in conjunction with the protection afforded by other programs intended to address various aspects of air pollution effects on ecosystems and vegetation, such as the acid deposition program and other regional approaches to reducing pollutants linked to nitrate or acidic deposition. Based on these considerations, and taking into account the information and recommendations discussed above, the Administrator proposed to revise the current secondary $PM_{2.5}$ and PM_{10} standards to address these other welfare effects by making them identical in all respects to the proposed suite of primary $PM_{2.5}$ and $PM_{10-2.5}$ standards.

In response to the proposal, in addition to their recommendation for a $PM_{2.5}$ secondary standard, CASAC recommended (Henderson, 2006, p. 4) ''that a secondary $PM_{10-2.5}$ standard be set at the same level as the primary PM coarse standard to protect against the various irritant, soiling and nuisance welfare or environmental effects of coarse particles. Since these effects are not uniquely related to urban sources or receptors, the standard should not be limited to urban areas.'' Only limited public comments were received on this aspect of the proposal.

In general, public comments relating to secondary standards and other welfare effects focused on issues related to the current secondary PM_{10} standards. Most of these commenters, including the groups who objected to the use of a qualified indicator for the primary thoracic coarse particle standard, argued that current levels of PM dust contribute or potentially contribute to nuisance, soiling, and irritant impacts on personal comfort and well being, especially in non-urban areas. The same commenters agreed with CASAC that, in the absence of a demonstration to the contrary, EPA is not justified in eliminating or reducing the level of protection to rural areas that is provided by the current suite of secondary standards. Most of these commenters recommended that EPA either retain the current PM_{10} secondary standard or replace it with a $PM_{10-2.5}$

standard set identical to the proposed primary standard without the proposed qualifications that limited application of the standard to urban areas.

A few commenters argued against retaining any secondary standard for coarse particles. Many of these same commenters argued that if EPA did set a secondary $PM_{10-2.5}$ standard, it should be set equal to the primary $PM_{10-2.5}$ standard because there was insufficient evidence to support adoption of a distinct secondary standard for $PM_{10-2.5}$ at this time. Furthermore, these commenters noted that in the proposal, EPA had correctly excluded from both primary and secondary standards ''any ambient mix of $PM_{10-2.5}$ that is dominated by rural windblown dust and soils and PM generated by agricultural and mining sources'' because these particles are nontoxic and generally settle quickly.

In reaching a final decision on the need to revise the PM secondary standards regarding these non-visibility related welfare effects, the Administrator has taken into account several key factors, including: (1) The latest scientific information on non-visibility welfare effects associated with PM, as previously described; (2) the post-proposal recommendations of CASAC, (3) comments received during the public comment period, and (4) the final decisions reached in today's notice on the primary standards for fine and coarse particles, as well as the decision presented above on secondary $PM_{2.5}$ standards to protect against visibility impairment. The Administrator notes that extending today's decision not to revise the current 24-hour primary PM_{10} standard to the secondary standard would be consistent with the recommendations of CASAC and would address the issues raised by the first group of commenters summarized above. Consistent with the assessment of the evidence in the Staff Paper and the CASAC recommendations, the Administrator disagrees with those who assert that no secondary standard is needed to protect against the welfare effects associated with coarse particles.

On the other hand, the Administrator does not believe that distinct secondary standards for fine or coarse particles are warranted for any of the effects considered in this section. The available evidence is not sufficient to support the selection of an ecologically based indicator or an indicator based distinctly on materials damage, soiling, irritant or nuisance effects, or other effects of PM. However, the Administrator recognizes that it is appropriate to continue control of ambient fine and coarse particles, especially long-term deposition of particles such as particulate nitrates and sulfates that contribute to the total input of nitrogen and sulfur to ecosystems that has been shown to adversely affect sensitive aquatic and terrestrial ecosystems, and/or particles that contribute to materials damage and soiling. The Administrator notes that setting the secondary PM standards identical to the revised suite of primary standards directionally improves the level of protection afforded vegetation, ecosystems, and materials. In addition, the Administrator continues to believe that the secondary NAAQS should be considered in conjunction with the protection afforded by other programs intended to address various aspects of air pollution effects on ecosystems and vegetation, such as the acid deposition program and other regional approaches to reducing pollutants linked to nitrate or acidic deposition.

Based on the above considerations, the Administrator concludes that it is appropriate to address the other welfare effects summarized in this section by revising the current suite of $PM_{2.5}$ secondary standards, making them identical in all respects to the suite of primary $PM_{2.5}$ standards, while retaining the current 24-hour PM_{10} secondary standard and revoking the current annual PM_{10} secondary standard. For the reasons noted in section III.D.1 above, the 24-hour PM_{10} standard will provide adequate protection against the known and potential effects related to long-term PM_{10} concentrations.

C. Final Decisions on Secondary PM Standards

For the reasons discussed above, and taking into account the information and assessments presented in the Criteria Document and Staff Paper, the advice and recommendations of CASAC, and public comments received on the proposal, the Administrator is revising the current secondary PM standards by making them identical in all respects to the suite of primary PM standards, as revised by today's action. In the Administrator's judgment, these standards, in conjunction with the regional haze program, will provide appropriate protection to address PM-related welfare effects, including visibility impairment, effects on vegetation and ecosystems, materials damage and soiling, and effects on climate change.

V. Interpretation of the NAAQS for PM

This section presents EPA's final decisions regarding the revision, addition, and/or revocation of appendices to 40 CFR Part 50 on interpreting the primary and secondary NAAQS for PM.

A. Amendments to Appendix N—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

The EPA proposed to revise the data handling procedures in appendix N to 40 CFR Part 50 for the annual and 24-hour $PM_{2.5}$ standards (71 FR 2685–2686). The proposed amendments to appendix N detailed the computations necessary for determining when the proposed primary and secondary $PM_{2.5}$ NAAQS were met. The proposed amendments also addressed data reporting, monitoring considerations, and rounding conventions. Key elements of the proposed revisions to appendix N were presented in section V of the preamble to the proposed rule and are summarized below, together with EPA's final decisions on revisions to appendix N.

1. General

As proposed, EPA is adding several new definitions to section 1.0 and using these definitions throughout the appendix, most notably ones for ''design values.'' Also, the 24-hour sampling timeframe has been clarified as representing ''local *standard* (word inserted) time.'' This revision reflects EPA's previous intent as well as majority practice, and also avoids ambiguity since local *clock* time varies according to daylight savings periods. No opposing comments were received on these changes.

2. $PM_{2.5}$ Monitoring and Data Reporting Considerations

As proposed, two new sections are being added to appendix N to more specifically stipulate and highlight monitoring and data considerations (71 FR 2685). New section 2.0 includes statistical requirements for spatial averaging (which is part of the form of the annual standard for $PM_{2.5}$). As discussed in section II.F.2 above, EPA is tightening two of the constraints on the use of spatial averaging to provide an adequate margin of safety to susceptible subpopulations by reflecting enhanced knowledge of typical monitor relationships in metropolitan areas.

New section 3.0 to appendix N codifies aspects of raw data reporting and raw data time interval aggregation including specifications of number of decimal places. Previously, these reporting instructions resided only in associated guidance documents. Section 3.0 also notes the process for assimilating monitored concentration data from collocated instruments into a

single ''site'' record; data for the site record would originate mainly from the designated ''primary'' monitor at the site location, but would be augmented with collocated Federal reference method (FRM) or Federal equivalent method (FEM) monitor data whenever valid data are not generated by the primary monitor. This procedure will enhance the opportunity for sites to meet data completeness requirements. This language likewise codifies existing practice, since the technique was previously documented in guidance documentation and implemented as EPA standard operating procedure. Commenters agreed that this was a valid approach and should be implemented.

3. $PM_{2.5}$ Computations and Data Handling Conventions

As proposed, EPA is maintaining a spatially-averaged annual mean, with revisions to the criteria for when spatial averaging can be used (see section 1 above, as well as section II.E.2), as the form of the annual $PM_{2.5}$ standard and is retaining a 98th percentile concentration as the form of the 24-hour $PM_{2.5}$ standard. Although no actual computational change was proposed for a spatially-averaged annual mean, the proposed Appendix N differentiated, in language and formulae, between a spatial average of more than one site and a spatial average of only one site. We are adopting these changes throughout Appendix N as appropriate to alleviate confusion caused by the current ''catch-all'' generic reference (*i.e.*, ''spatial average'' or ''spatially averaged'') found throughout the existing Appendix N.

As proposed, appendix N identifies the NAAQS metrics and explains data capture requirements and comparisons to the standards for the annual $PM_{2.5}$ standard and the 24-hour standard (in sections 4.1, and 4.2, respectively); data rounding conventions (in section 4.3); and formulas for calculating the annual and 24-hour metrics (in sections 4.4 and 4.5, respectively). A significant comment related to the 98th percentile formula and an associated bias for periodic sampling is discussed above in section II.E.1.

With regard to the annual $PM_{2.5}$ standard, EPA proposed to retain current data capture requirements with two exceptions. The current appendix N had reduced data capture requirements for years that exceeded the level of the annual NAAQS; specifically, a minimum of 11 valid samples per quarter as opposed to a more stringent 75 percent (of scheduled samples) was considered sufficient in those instances where the annual mean exceeded the NAAQS level. See existing Part 50 App. N 2.1 (b). The EPA proposed to also allow 11 or more samples per quarter as an acceptable minimum if the calculated annual standard design value exceeds the level of the standard. The intent of this change was to prevent a site with a violating design value that is made up of one (or more) annual means under the level of the NAAQS from not being used for regulatory purposes just because one (or more) of the quarters of the year(s) under the NAAQS level has less than 75% data capture. One commenter voiced a general concern over the lack of uniformity in completeness criteria but the other commenters supported the change. Taking these comments into consideration, EPA is revising appendix N as proposed with regard to this issue.

A second proposed change in the data completeness requirements would incorporate data substitution logic for situations where the proposed 11 samples per quarter minimum is not met. Consistent with existing guidance and practice (implementing current App. N 2.1 (c)), EPA proposed to incorporate the following requirement into appendix N: a quarter with less than 11 samples would be complete and valid if, by substituting an historically low 24-hr value for the missing samples (up to the 11 minimum), the results yield an annual mean, spatially averaged annual mean, and/or annual standard design value that exceeds the level of the standard. The EPA proposed to implement this procedure for making comparisons to the NAAQS and not to permanently alter the reported data. The EPA considered this a very conservative means of imputing data (and increasing the opportunities for using monitoring data that otherwise are valid), but solicited comment on the proposed approach. Several comments were received on this approach and the majority favored it. However, two commenters (NESCAUM and a constituent State) suggested a limit of one quarter (out of the 12 in a 3-year period) where the substitutions could be made. They suggested the limitation because they were concerned that the absence of a significant amount of data is an indication that site operator and/or equipment problems exist. The EPA shares this concern but observes that the method protocol itself guards against excessive utilization. The more missing values that are potentially substituted with the method effectively reduce the chance of a valid result (*i.e.*, a usable design value). Taking these comments into consideration, EPA is revising appendix N as proposed with regard to this issue.

With regard to the 24-hour $PM_{2.5}$ standard, EPA proposed to revise appendix N to include a special formula (Equation 6 in the proposed rule, 71 FR 2702) for computing annual 98th percentile values when a site operates on an approved seasonal sampling schedule. This formula was previously stated only in guidance documentation (EPA, 1999) but was utilized, where appropriate, in official OAQPS design value calculations. No adverse comments were received on this addition.

The proposed revisions to appendix N also incorporated language explicitly stating that 98th percentiles (for both regular and seasonal sampling schedules) were to be based on the *applicable* number of samples rather than the *actual* number of samples. The EPA proposed that both annual 98th percentile equations (proposed Equations 5 and 6) would reflect this approach. The EPA acknowledges that it made an error in the placement of the ''applicable number of samples'' references into the denominator of the special seasonal 98th percentile formula (Equation 6) and has restored the equation to its original form. The EPA notes that the special season formula already takes into consideration oversampling in low periods. Furthermore, because the ''applicable number of samples'' was removed from the seasonal formula, there was no need to stipulate that ''seasons'' could not divide months; that proposed requirement was only necessary to accommodate the calculation of ''applicable number.''

The EPA solicited comment on the ''applicable number of samples'' concept and calculation and received several comments on the concept. One commenter endorsed it without discussion, one commenter did not object to it but noted that it was difficult to program, and another commenter thought that the concept unnecessarily complicates matters and favored the use of ''scheduled number of samples'' instead. Two commenters said that it would be an acceptable approach if it still permitted ''extra'' sampling at the end of a month to make up for missed samples. The EPA notes that it has never endorsed this ''extra'' sampling practice for the 24-hour $PM_{2.5}$ standard, so that the commenter's premise is incorrect. The EPA agrees with comments that expressed concerns about this calculation being too complicated and, therefore, has simplified the procedure in a manner that corresponds to the calculation of

data capture. The applicable number of samples for a given year is now defined as simply the sum of the number of completed scheduled (''creditable'') samples for the year. The new appendix N defines the new term, ''creditable'' and describes its use in calculating data capture rates and ''applicable number.'' For sites that sample correctly (*i.e.* don't oversample at the end of the month), the simpler ''applicable number'' procedure will produce the same result as the proposed calculation.

To simplify the regulatory language, as proposed, EPA is revising appendix N to eliminate the equation computational examples. The EPA will provide extensive computational examples in forthcoming guidance documents.

4. Conforming Revisions

As proposed, EPA is revising terminology and data handling procedures associated with exceptional events to conform to rules which EPA proposed to implement the recent amendment to CAA section 319 (42 U.S.C. 7619) by section 6013 of the Safe, Accountable, Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59). The EPA proposed rules to address exceptional events on March 10, 2006 (71 FR 12592). The EPA is replacing the term currently used in appendix N.1(b)—uncontrollable or natural events—with ''exceptional events,'' corresponding with the term used in the recent amendment. (Because this revision makes only a semantic change to existing appendix N, EPA believes the change is consistent with section 6013(b)(4) of SAFETEA–LU, which provided that EPA continue to apply existing appendix N of part 50 (among others) until the effective date of rules implementing the exceptional event provisions in amended section 319 of the CAA.)[89]

B. Proposed Appendix P—Interpretation of the National Ambient Air Quality Standards for $PM_{10-2.5}$

The EPA proposed to add appendix P to 40 CFR Part 50 in order to add data handling procedures for the proposed 24-hour $PM_{10-2.5}$ standard. Since the current 24-hour PM_{10} standard is being retained and a $PM_{10-2.5}$ standard is not being implemented, the proposed new appendix P (on interpreting the proposed 24-hour $PM_{10-2.5}$ standard) is not being added.

[89] EPA will answer all comments raising substantive issues relating to the natural events policy when it finalizes the pending exceptional events proposal.

C. Amendments to Appendix K—Interpretation of the National Ambient Air Quality Standards for PM_{10}

Because the Administrator has decided to retain the current 24-hour PM_{10} standard but to revoke and not replace the annual PM_{10} standard, some changes are required to appendix K to 40 CFR Part 50 on interpreting the primary and secondary NAAQS for PM_{10}. The modifications principally entailed simply removing the obsolete annual standard related sections. However some typographical corrections were also made to some of the remaining sections related to the 24-hour standard; a spelling error was corrected and certain equal signs (=) were changed to plus signs (+) in the illustrative examples found in section 3 of the appendix in order to correct obvious mistakes in arithmetic. For readers' convenience, EPA is reprinting the entire Appendix K in the rule section of this notice, but is not reopening or reconsidering any parts of the Appendix except those discussed above.

VI. Reference Methods for the Determination of Particulate Matter as $PM_{10-2.5}$ and $PM_{2.5}$

A. Appendix O to Part 50—Reference Method for Determination of Coarse Particulate Matter as $PM_{10-2.5}$ in the Atmosphere

The EPA proposed a new reference method (FRM) for measuring mass concentrations of coarse particles ($PM_{10-2.5}$) in ambient air as a new Appendix O to 40 CFR part 50.71 FR 2703. Although this method can fulfill a variety of PM monitoring objectives, its primary purpose is to serve as the standard of comparison for determining the adequacy of alternative ''equivalent'' methods for use in lieu of the FRM. *Id.* at 2687–88. In conjunction with additional analysis, this method may be used to develop speciated data. The EPA expects to designate such alternative methods as equivalent methods (FEMs) under revised provisions of 40 CFR part 53, published elsewhere in today's **Federal Register**. The EPA is finalizing the FRM for $PM_{10-2.5}$, even though a NAAQS for $PM_{10-2.5}$ is not being adopted. An official FRM will be an important element in facilitating consistent research on $PM_{10-2.5}$ air quality and health effects and in promoting the commercial development of FEMs. In a separate final rule amending 40 CFR part 58 elsewhere in today's **Federal Register**, the EPA is promulgating a requirement that States deploy about 60 FRM or FEM $PM_{10-2.5}$ monitors as part of a new National Core (NCore) multi-pollutant monitoring stations. The EPA also plans to negotiate with some States for additional NCore stations which would include $PM_{10-2.5}$ monitors.

The $PM_{10-2.5}$ reference method is a difference method based on separate, concurrent measurements of PM_{10} and $PM_{2.5}$, with the $PM_{10-2.5}$ measurement being the result of subtraction of the $PM_{2.5}$ measurement from the corresponding PM_{10} measurement. The 24-hour integrated measurements are based on conventional, low-volume filter samples of particulate matter analyzed gravimetrically after a period of moisture and temperature equilibration. Although the component PM_{10} and $PM_{2.5}$ filter samples can be subsequently analyzed chemically, no actual, physically separated $PM_{10-2.5}$ sample is produced by the method for chemical species analysis. The EPA anticipates that one or more alternative methods that do provide $PM_{10-2.5}$ samples that are completely or nearly completely separated physically for species analysis (such as the dichotomous sampler method) will become available as an FEM.

The substantial advantages of the method and the rationale for its selection as the FRM for $PM_{10-2.5}$ are discussed in the proposal (71 FR 2687). In that discussion, EPA acknowledges that the method does not provide a direct measurement of $PM_{10-2.5}$, has some significant shortcomings, and likely will not ideally meet all needs for monitoring $PM_{10-2.5}$ in the ambient air. The EPA indicated that although the method is readily usable in routine monitoring networks, it is clearly less than optimally suited for such use. Instead, EPA expects that alternative FEMs that typically offer some substantial advantage or advantages over the FRM will become the principle methods deployed for routine monitoring. Further, EPA anticipates that self-contained, automated FEMs will become available to provide near real-time, hourly monitoring data availability and ease the monitoring burdens of monitoring agencies. Although the FRM will likely be used initially in monitoring applications because of its conventional nature and similarity to the widely used $PM_{2.5}$ FRM, ultimately its principle purpose will be as the standard of reference for determining the adequacy of alternative, candidate FEMs and for assessing the quality of $PM_{10-2.5}$ monitoring data obtained in monitoring networks, particularly networks using alternative FEMs. The FRM may thus be used on a voluntary basis by states wishing to deploy $PM_{10-2.5}$ monitors prior to the

January 1, 2011 deadline for operation of $PM_{10-2.5}$ monitors at NCore multi-pollutant sites (a requirement of the final rule amending 40 CFR part 58, elsewhere in today's **Federal Register**), although many of the required monitors operating at NCore sites in 2011 and beyond may be FEMs.

After considering alternative methodologies and weighing the various pros and cons of other methods, as also discussed in the proposal preamble, the EPA concluded that the proposed method is the best method currently available to serve these purposes, while also being readily usable for many initial monitoring applications. The Ambient Air Monitoring and Methods Subcommittee of the Clean Air Scientific Advisory Committee (CASAC) concurs with this assessment and approach, recommending that EPA adopt the difference method as the FRM, but that it ultimately be used primarily as a benchmark for evaluating the performance of continuous as well as other direct-measuring filter-based integrated methods (Henderson, 2005c).

Of the relatively few comments received on the proposed FRM, most raised concern about some of the same shortcomings of the method that had already been considered by EPA in selecting the method (and by the CASAC in concurring with EPA's approach). No comments presented any issues that resulted in any changes to the method. Thus, the FRM is being promulgated today (in Appendix O), with the only change being deletion of the reference to national ambient air quality standards in section 1.1 of the method, since the EPA is not using $PM_{10-2.5}$ as the indicator in the NAAQS addressing thoracic coarse particles.

One comment raised concern about the relationship of the new $PM_{10-2.5}$ FRM to the requirements of Section 6012 of the SAFETEA–LU, under which the EPA is to ''develop a Federal reference method to measure directly particles that are larger than 2.5 micrometers in diameter without reliance on subtracting from coarse particle measurements those particles that are equal to or smaller than 2.5 micrometers in diameter.'' As discussed in the proposal preamble at 71 FR 2690, EPA believes that this FRM does not conflict with either the specific language or intent of the SAFETEA–LU Act. The new FRM, together with the additions to part 53 (published elsewhere in this **Federal Register**) that will allow designation of FEMs for monitoring $PM_{10-2.5}$, will provide a strong incentive to stimulate the further commercial development and refinement of new or existing methods for $PM_{10-2.5}$, most of which will not rely on subtraction of fine mode particle measurements from coarse mode particle measurements. Further, EPA is actively investigating the possibility that a dichotomous-based method might ultimately provide a more direct means of measuring the coarse fraction of PM_{10}. Within the time frame prescribed by the SAFETEA–LU, it appears very likely that at least one such method will be shown to achieve an adequate level of performance and may therefore be identified and utilized as a ''reference method''. The terms of the SAFETEA–LU Act do not require that the Agency promulgate a non-difference method as either the sole FRM or as an alternative FRM as specifically defined in part 53. Until such a new, more direct method is demonstrated to be suitable and adequate and becomes commercially available, the difference-based FRM of Appendix O provides a reliable, proven measurement method which can be successfully implemented immediately. The CASAC agreed that none of the direct sampling methods is presently sufficiently reliable for use as an FRM, Henderson, 2005c, but that suitable direct measurement methods could be developed quickly enough to become approved as equivalent methods in a planned monitoring network.

The salient technical aspects of the FRM are provided in the proposal preamble (71 FR 2690). The dual samplers specified in the FRM are essentially identical to the sampler specified in the $PM_{2.5}$ FRM (40 CFR part 50, appendix L) except for removal of the $PM_{2.5}$ WINS impactor particle separator from the sampler used for PM_{10}. Operational procedures and most other aspects are also similar or identical to those for the $PM_{2.5}$ FRM. One notable condition is that the PM_{10} sampler of the $PM_{10-2.5}$ FRM must meet the higher standards of performance and manufacture of appendix L rather than the somewhat lesser requirements for conventional PM_{10} samplers in 40 CFR part 50, appendix J. Thus, conventional PM_{10} FRM samplers will not be acceptable for use as part of a $PM_{10-2.5}$ FRM sampler pair. But both the PM_{10} and $PM_{2.5}$ component measurements obtained incidental to $PM_{10-2.5}$ measurements would be valid as PM_{10} or $PM_{2.5}$ measurements under the monitoring requirements of 40 CFR part 58, provided they are sited at the appropriate spatial scale. However, since such PM_{10} samplers meet higher standards of performance than conventional PM_{10} samplers, the measurements need to be differentiated from conventional PM_{10} measurements (*e.g.* by a descriptor such as PM_{10c}). Also, conventional PM_{10} measurements are reported based on standard temperature and pressure, whereas PM_{10c} measurements are reported based on actual local conditions of temperature and pressure.

The EPA designation of specific, commercial candidate $PM_{10-2.5}$ FRM samplers will be based on an application and on consideration in accordance with new or revised provisions of 40 CFR part 53, published elsewhere in this **Federal Register**. Since $PM_{2.5}$ FRM samplers have been in use for several years and are readily available, EPA designation of $PM_{10-2.5}$ FRM sampler models based on one or more currently available $PM_{2.5}$ sampler models is expected to occur soon after promulgation. The two samplers of the $PM_{10-2.5}$ FRM sampler pair would be required to be of the same make and model and matched design and fabrication so that they are essentially identical (except that one would not have a $PM_{2.5}$ particle separator). The samplers may be of either single-filter or multiple-filter (sequential-sample) design, as long as both are of the same type, design, and configuration. For a commercial sampler that has already been designated as a $PM_{2.5}$ FRM, no further testing under part 53 would be required for designation as a $PM_{10-2.5}$ FRM, although the sampler manufacturer would have to submit a formal, brief application under part 53. Users may assemble their own $PM_{10-2.5}$ sampler pair using existing $PM_{2.5}$ samplers of matched model or design by converting one of the samplers to a PM_{10c} sampler, provided that the specific sampler pair has been previously designated by the EPA as a $PM_{10-2.5}$ FRM under part 53.

A $PM_{2.5}$ sampler pair consisting of samplers that are slightly dissimilar or have some minor design or model variations (and one sampler is configured as a PM_{10c} sampler) may be considered for designation by EPA as a Class I FEM under revised part 53. An application for an FEM determination would need to be submitted under part 53, and some supplemental or special tests may be required. Also, a pairing of slightly dissimilar samplers that has not been designated by EPA as an FRM or Class I FEM may be considered for approved use in $PM_{10-2.5}$ monitoring networks as a user-modification of an FRM under section 2.8 of appendix C to 40 CFR part 58.

B. Amendments to Appendix L—Reference Method for the Determination of Fine Particulate Matter (as $PM_{2.5}$) in the Atmosphere

In connection with the proposal of a new FRM for $PM_{10-2.5}$, the EPA also proposed (71 FR 2691) minor technical changes to the FRM for $PM_{2.5}$ (40 CFR Part 50, appendix L). EPA is adopting these changes as proposed. These changes are to provide improvements in the efficiency of the method in monitoring network operations without altering the method's performance.

The most significant change is the addition of an alternative $PM_{2.5}$ particle size separator, specifically, a very sharp cut cyclone (VSCC™) manufactured by BGI Incorporated, Waltham, MA. FRM samplers now may be configured with either the original WINS impactor or the alternative cyclone separator, and existing FRM samplers may be retrofitted by users with the cyclone, if desired. Sampler users wishing to retrofit their samplers should contact the sampler manufacturer to obtain the correct BGI VSCC™ model along with the associated installation, operation, and maintenance instructions specific to the sampler model, and a new designated method label to be attached to the sampler. The seven sampler models configured with the BGI VSCC™ that have been designated as FEMs will be re-designated as reference methods, and owners of such sampler should contact the sampler manufacturer to receive a new reference method label for the sampler.

Another change is substitution of an improved type of impactor oil for the original $PM_{2.5}$ WINS particle size separator to correct an occasional cold-weather performance issue with the originally specified oil. Finally, minor increases in the time limits for sample retrieval and sample weighing were proposed, as were minor reductions in the sampler data output reporting requirements. Justifications for these changes are discussed in the proposal preamble. Of the very few comments received in connection with these proposed changes, all were supportive. Accordingly, the changes are adopted as proposed.

VII. Issues Related to Implementation of PM_{10} Standards

Issues related to implementation of the NAAQS are not relevant to the Administrator's decisions regarding whether it is appropriate to set or revise a standard. For this reason, EPA has not addressed implementation-related issues in preceding sections, nor has it addressed public comments regarding implementation. The EPA identified issues regarding transition to or implementation of the standards promulgated in this rule in an advance notice of proposed rulemaking (ANPR) on Transition to New or Revised Particulate Matter National Ambient Air Quality Standards (71 FR 6718–6729, February 9, 2006). In the ANPR, EPA solicited comment on a wide range of issues related to both the fine and coarse particle NAAQS, including the schedules for implementation of these standards and the requirements that would be applicable if any PM NAAQS were revoked. The public comment period for the ANPR ended on July 10, 2006. The EPA is currently reviewing the public comments received. In the near future, EPA intends to address, as necessary, issues such as designations, conformity, and new source review, related to implementation of today's final rule. In this section, EPA highlights a few issues that may arise as an immediate consequence of today's final decision to retain the 24-hour PM_{10} standards but revoke the annual PM_{10} standards, and restates existing policies and practices to address several concerns raised by commenters.

A. Summary of Comments Received on Transition

Many commenters, particularly State and local air pollution control agencies and Tribes, but also environmental and public health groups, voiced strong concerns about EPA's proposal to revoke current annual PM_{10} standards everywhere upon promulgation of this final rule, and to revoke, upon finalization of a primary 24-hour standard for $PM_{10-2.5}$, the current 24-hour PM_{10} standard everywhere except in 15 large urbanized areas (with population greater than 100,000) that have at least one monitor violating the 24-hour PM_{10} standard based on the most recent three years of air quality data. For these few areas, EPA proposed to retain the 24-hour PM_{10} standard until designations were completed under a final 24-hour $PM_{10-2.5}$ standard. While a few local government commenters recommended that one or another of the 15 areas be dropped from this list—i.e., recommended that the 24-hour PM_{10} standard should be retained in fewer locations—most commenters expressing views on transition suggested that EPA was being too hasty in dismantling existing PM_{10} protections. Pointing to long delays in the implementation timeline for the 1997 $PM_{2.5}$ standards due to litigation, such that designations were not completed for eight years after promulgation of the final rule, these commenters suggested that the 24-hour PM_{10} standard should remain in place everywhere until designations were complete under the 24-hour $PM_{10-2.5}$ standard, or even until $PM_{10-2.5}$ SIPs had been submitted by States. Some Tribal, State and local commenters suggested that the PM_{10} standard should be retained permanently in all areas where the $PM_{10-2.5}$ standard did not apply by virtue of the monitoring requirements, which limited NAAQS comparable monitors to sites that met the five-point site suitability test outlined in the monitoring rule. Other commenters maintained that EPA has no authority to revoke the PM_{10} standards or the specific pollution controls mandated in Title I Subpart 4 for PM_{10} nonattainment areas.[90]

The EPA notes that the Administrator's decision to retain the current 24-hour PM_{10} standard alleviates these concerns. Because the 24-hour PM_{10} standard is generally controlling, as described above in section III.D.2, retention of this standard ensures the continuation of existing public health protections. The EPA further believes that it has the legal authority to revoke the annual PM_{10} standard, and addresses this issue in detail in the Response to Comments document.

B. Impact of Decision on PM_{10} Designations

The EPA notes that because it is retaining the current 24-hour PM_{10} standards, new nonattainment designations for PM_{10} will not be required under the provisions of the Clean Air Act. As established in Section 107(d)(1) of the Act, the only time EPA is obligated to designate areas as attainment or nonattainment is after it promulgates or revises a NAAQS. Under an existing standard, all redesignations are at the Administrator's discretion: EPA has no legal obligation to redesignate an area even if a monitor should register a violation of that standard (see CAA Section 107(d)(3)). Thus, this final decision does not affect existing PM_{10} nonattainment designations. This is consistent with past practice. For example, when EPA decided not to revise the ozone standards in 1993 or the SO_2 standards in 1996, it did not revisit prior designations or designate any new areas as nonattainment. The EPA does regard air quality violations seriously, and does expect States to take actions to reduce

[90] These comments and EPA's responses to the issues raised by commenters are discussed in greater detail in the Response to Comments document.

air quality to healthy levels in any areas that are experiencing violations. However, EPA recognizes that there are other ways to address such violations besides redesignating an area as nonattainment. For example, EPA can work directly with a State and nearby industries to take appropriate actions to reduce emissions that are contributing to the violation. The EPA has worked in this way with States in the past. Of course, States may request redesignation of an area, either from nonattainment to attainment, or from attainment to nonattainment, based on the most recent air quality data available, if they choose to do so. In addition, both transportation and general conformity will continue to apply to all PM_{10} nonattainment and maintenance areas since no designations are changing. However, because EPA is revoking the annual PM_{10} standard in this final rule, after the effective date of this rule conformity determinations in PM_{10} areas will only be required for the 24-hour PM_{10} standard; conformity to the annual PM_{10} standard will no longer be required. The EPA will address specific conformity issues related to the revocation of the annual PM_{10} standard either in future guidance or in another public document. The EPA also notes that PSD increments and baseline years will not be affected by this decision.

The EPA is retaining the current 24-hour PM_{10} standards and revoking the annual PM_{10} standards. Today's rule does not change any existing guidance related to the PM_{10} NAAQS as it applies to the 24-hour PM_{10} standards, and to the extent that modifications to the existing guidance are needed in response to today's action, EPA will make such modifications in the near future.

As described in the revisions to Part 53/58 appearing elsewhere in today's **Federal Register**, EPA believes a reduction in the size of the existing monitoring networks for certain pollutants, including PM_{10}, for which the large majority of monitors record no NAAQS violations, is appropriate as a way to free up resources for higher priority monitoring objectives. The current minimum PM_{10} network requirements are based on the population of a metropolitan statistical area (MSA) and its historical PM_{10} air quality. This focus on larger urban areas is consistent with EPA's belief that it is appropriate to target an indicator for thoracic coarse particles toward urban and industrial areas, where the ambient mix of thoracic coarse particles is dominated by emissions from particular types of sources. See sections III.C.2 and III.C.3 above. To the extent that States and Tribes are considering reducing the total number of PM_{10} monitors deployed, EPA believes, consistent with the basis for retaining the 24-hour PM_{10} standard, that priority should be given to maintaining monitors sited in urban and industrial areas.

In addition, if States and Tribes are considering deploying new PM_{10} monitors, EPA recommends, again consistent with the basis for retaining the 24-hour PM_{10} standard, that those monitors be placed in areas where there are urban and/or industrial sources of thoracic coarse particles. Furthermore, consistent with the monitors used in studies that informed the Administrator's decision on the level of the standard (see section III.D above), EPA recommends that any new PM_{10} monitors be placed in locations that are reflective of community exposures at middle and neighborhood scales of representation, and not in source-oriented hotspots.

As summarized briefly above in section III.E and described in detail in section V.E.1 of the monitoring rule published elsewhere in today's **Federal Register**, EPA is also establishing requirements for a new multi-pollutant monitoring network that will include approximately 75 $PM_{10-2.5}$ monitors that will speciate according to the composition as well as size of the particles. These speciated $PM_{10-2.5}$ monitors are a critical part of EPA's research program on coarse particles, and will be sited in both urban and rural locations. It is EPA's expectation that these monitors will help alleviate the current deficit of information regarding the public health impacts of $PM_{10-2.5}$ mixes in different locations.[91]

C. Impact of Decision on State Implementation Plans (SIPs) and Control Obligations

The EPA's decision today to retain the PM_{10} NAAQS does not establish new legal obligations beyond those that already exist. Specifically, this final rule does not obligate States to revise SIPs or to create new obligations to control particular sources. In response to comments regarding potential impacts of any coarse particle standard on agricultural and mining sources, EPA notes that the NAAQS do not create emissions control obligations for individual sources or groups of sources. In this particular case, even if an individual source were shown to contribute to an exceedance of the 24-hour PM_{10} standard, this would not necessarily result in regulation of that source. Decisions about which sources to control are generally made by the State in the context of developing or revising SIPs. Given that the available evidence regarding adverse health effects associated with exposure to thoracic coarse particles is strongest with respect to urban and industrial ambient mixes of those particles, EPA encourages States to focus control programs on urban and industrial sources to the extent that those sources are contributing to air quality violations. This would help to ensure that resources expended on implementing the 24-hour PM_{10} standard realize the maximum public health and welfare benefits.

With regard to emissions of thoracic coarse particles from agricultural sources, EPA recognizes that the United States Department of Agriculture (USDA) has been working with the agricultural community to develop conservation systems and activities to control coarse particle emissions. Based on current ambient monitoring information, these USDA-approved conservation systems and activities have proven to be effective in controlling these emissions in areas where coarse particles emitted from agricultural activities have been identified as a contributor to violation of the NAAQS. The EPA concludes that where USDA-approved conservation systems and activities have been implemented, these systems and activities have satisfied the Agency's reasonably available control measure and best available control measure requirements. The EPA believes that in the future, when properly implemented, USDA-approved conservation systems and activities should satisfy the requirements for reasonably available control measures or best available control measures. The EPA will work with States to identify appropriate measures to meet their RACM or BACM requirements, including site-specific conservation systems and activities. The EPA will continue to work with USDA to prioritize the development of new conservation systems and activities;

[91] In addition, EPA notes that the Agency's National Center for Environmental Research recently issued a Request for Proposals on ''Sources, Composition, and Health Effects of Coarse Particulate Matter'' which is designed to (1) improve understanding of the type and severity of health outcomes associated with exposure to $PM_{10-2.5}$; (2) improve understanding of subpopulations that may be especially sensitive to $PM_{10-2.5}$ exposures including minority populations, highly exposed groups, and other susceptible groups; (3) characterize and compare the influence of mass, composition, source characteristics and exposure estimates in different locations and differences in health outcomes, including comparisons in rural and urban areas; and (4) characterize the composition and variability of $PM_{10-2.5}$ in towns, cities or metropolitan areas, including comparisons of rural and urban areas.

demonstrate and improve, where necessary, the control efficiencies of existing conservation systems and activities; and ensure that appropriate criteria are used for identifying the most effective application of conservation systems and activities.

The EPA does not construe the Clean Air Act (CAA) to require that the Agency make an independent determination as to whether a PSD increment is violated in any specific State or Tribal reservation. The EPA has the discretion to inquire into these matters and call for revisions to a State's SIP if an EPA investigation concluded with EPA finding that the PSD increment is being exceeded. The EPA's regulations at 40 CFR 51.166(a)(3) directs a state to make revisions to its SIP if EPA or a State finds such an exceedance. However, this regulation does not require that EPA conduct its own investigation and make such a finding in all cases where a State has completed a periodic review and submitted its findings to EPA. Oversight of this nature is a matter within EPA's discretion. Likewise, section 110(k)(5) of the Clean Air Act does not require that EPA periodically investigate and determine whether a SIP is sufficient to protect the PSD increments. The EPA has the discretion to decide when it is appropriate to exercise its oversight authority and inquire into these issues in a specific State or Tribal reservation. When EPA exercises this discretion and finds an exceedance of the increments or another SIP deficiency, EPA is then required to issue a SIP call under section 110(k)(5) of the CAA. However, the CAA affords EPA discretion on whether to make a determination that a state SIP is deficient. See, *New York Public Interest Research Group* v. *Whitman,* 321 F.3d 316, 331 (2d Cir. 2003) (considering analogous provision of the CAA addressing EPA oversight of state Title V operating permit programs).

D. Consideration of Fugitive Emissions for New Source Review (NSR) Purposes

Under the current NSR regulations, for purposes of determining whether a stationary source qualifies as a major stationary source, that source must include fugitive emissions in calculating the total amount of a pollutant directly emitted, or the potential to emit that pollutant, only if the source is associated with a source category listed by the Administrator pursuant to notice and comment rulemaking in accordance with Section 302(j) of the Clean Air Act (CAA). Agricultural and mining sources are generally not among those listed by the Administrator. Therefore, fugitive emissions from sources in these categories are generally not included in making major source determinations. However, the current NSR regulations require that once any source qualifies as a major stationary source, that source must count all fugitive emissions toward determining whether an emissions increase results in a major modification of that source regardless of whether the source is associated with a source category listed by the Administrator. On July 11, 2003, we received a petition for reconsideration of the current NSR regulations relating to whether fugitive emissions must be counted for purposes of determining whether a major modification occurs. In January 2004, we agreed to reconsider this issue, and we expect to propose changes to the existing regulations in the near future.

E. Handling of PM_{10} Exceedances Due to Exceptional Events

The EPA recognizes that PM_{10} exceedances may be caused, in whole or in part, by exceptional events, including natural events such as windstorms. In some of these instances, the PM_{10} exceedance(s) may also be associated with anthropogenic emissions that contribute to total PM_{10} concentrations. Under EPA's March 2006 *Proposed Rule on the Treatment of Data Influenced by Exceptional Events* (71 FR 12592–12610), and consistent with historical practice, an exceedance may be treated as an exceptional event even though anthropogenic sources such as agriculture and mining emissions contribute to the exceedance. (EPA's Exceptional Events Rule will be finalized in March 2007 and will discuss this issue in more detail.)

VIII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under section 3(f)(1) of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is an ''economically significant regulatory action'' because it is likely to have an annual effect on the economy of $100 million or more. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action (Docket ID No. EPA–HQ–OAR–2001–0017).

In addition, EPA prepared a regulatory impact analysis (RIA) of the potential costs and benefits associated with this action, entitled ''Regulatory Impact Analysis for Particulate Matter National Ambient Air Quality Standards'' (September 2006). The RIA estimates the nationwide costs and monetized human health and welfare benefits of attaining two alternatives to the current suite of $PM_{2.5}$ NAAQS (15 $\mu g/m^3$ annual, 65 $\mu g/m^3$ daily). Specifically, the RIA compares the current standards to the proposed alternative of 15 $\mu g/m^3$ annual, 35 $\mu g/m^3$ daily and a tighter alternative of 14 $\mu g/m^3$ annual, 35 $\mu g/m^3$ daily. The RIA contains illustrative analyses that consider a limited number of emissions control scenarios that States and Regional Planning Organizations might implement to achieve the 1997 $PM_{2.5}$ NAAQS and these alternative $PM_{2.5}$ NAAQS. It calculates the incremental costs that might be incurred between the base year of 2015, which is the year by which States must all be in attainment with the 1997 $PM_{2.5}$ standards (15 $\mu g/m^3$ annual, 65 $\mu g/m^3$ daily), and 2020, which is the final date by which States would implement controls to attain the revised $PM_{2.5}$ standards.

As discussed above in section I.B, the Clean Air Act and judicial decisions make clear that the economic and technical feasibility of attaining ambient standards are not to be considered in setting or revising NAAQS, although such factors may be considered in the development of State plans to implement the standards. Accordingly, although an RIA has been prepared, the results of the RIA have not been considered in issuing this final rule.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* There are no information collection requirements directly associated with revisions to a NAAQS under section 109 of the CAA.

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 in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as 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 final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. Rather, this rule establishes national standards for allowable concentrations of particulate matter in ambient air as required by section 109 of the CAA. See also *ATA I* at 1044–45 (NAAQS do not have significant impacts upon small entities because NAAQS themselves impose no regulations upon small entities).

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 1 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 of 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 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.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or Tribal governments or the private sector. The rule imposes no new expenditure or enforceable duty on any State, local or Tribal governments or the private sector, and EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Furthermore, as indicated previously, in setting a NAAQS EPA cannot consider the economic or technological feasibility of attaining ambient air quality standards, although such factors may be considered to a degree in the development of State plans to implement the standards. See also *ATA I* at 1043 (noting that because EPA is precluded from considering costs of implementation in establishing NAAQS, preparation of a Regulatory Impact Analysis pursuant to the Unfunded Mandates Reform Act would not furnish any information which the court could consider in reviewing the NAAQS). Accordingly, EPA has determined that the provisions of sections 202, 203, and 205 of the UMRA do not apply to this final decision. The EPA acknowledges, however, that any corresponding revisions to associated SIP requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively, might result in such effects. Accordingly, EPA has addressed unfunded mandates in the notice that announces the revisions to 40 CFR part 58, and will, as appropriate, address unfunded mandates when it proposes any revisions to 40 CFR part 51.

E. 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.''

At the time of proposal, EPA concluded that the proposed rule would not have federalism implications. The EPA stated that the proposed rule would 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. However, EPA recognized that States would have a substantial interest in this rule and any corresponding revisions to associated SIP requirements and air quality surveillance requirements, 40 CFR part 51 and 40 CFR part 58, respectively. Therefore, in the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicited comment on the rule from State and local officials at the time of proposal.

One commenter who opposed EPA's proposed decision on the standards for thoracic coarse particles stated that the decision violated E.O. 13132. The commenter argued that EPA's proposal to replace the PM_{10} standards with a new 24-hour $PM_{10-2.5}$ standard based on a qualified indicator would substantially impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Specifically, the commenter stated that the proposed rule language establishing that ''agricultural sources, mining sources, and other similar sources of crustal material shall not be subject to control in meeting this standard'' was a clear infringement upon States' authority with regard to implementation of the NAAQS. The EPA notes that in light of the final decision to retain the PM_{10} indicator, and the 24-hour PM_{10} NAAQS, the concern voiced by this commenter is no longer relevant. The final rule does not exclude any sources

from control under the 24-hour PM_{10} standard.

Therefore, EPA concludes that this final 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. The rule does not alter the relationship between the Federal government and the States regarding the establishment and implementation of air quality improvement programs as codified in the CAA. Under section 109 of the CAA, EPA is mandated to establish NAAQS; however, CAA section 116 preserves the rights of States to establish more stringent requirements if deemed necessary by a State. Furthermore, this rule does not impact CAA section 107 which establishes that the States have primary responsibility for implementation of the NAAQS. Finally, as noted above in section E on UMRA, this rule does not impose significant costs on State, local, or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

F. 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 rule concerns the establishment of PM NAAQS. The Tribal Authority Rule gives Tribes the opportunity to develop and implement CAA programs such as the PM NAAQS, but it leaves to the discretion of the Tribe whether to develop these programs and which programs, or appropriate elements of a program, they will adopt.

Although EPA determined at the time of proposal that Executive Order 13175 did not apply to this rule, EPA contacted tribal environmental professionals during the development of this rule. The EPA staff participated in the regularly scheduled Tribal Air call sponsored by the National Tribal Air Association during the summer and fall of 2005 as the proposal was under development, as well as the call in the spring of 2006 during the public comment period on the proposed rule. The EPA sent individual letters to all federally recognized Tribes within the lower 48 states and Alaska to give Tribal leaders the opportunity for consultation, and EPA staff also participated in Tribal public meetings, such as the National Tribal Forum meeting in April 2006, where Tribes discussed their concerns regarding the proposed rule. Furthermore, the Administrator discussed the proposed PM NAAQS with members of the National Tribal Caucus and with leaders of individual Tribes during the spring and summer of 2006, in advance of his final decision.

During the course of these meetings and in written comments submitted to the Agency, Tribal commenters expressed significant concerns about the implications of the proposed rule for Tribes. In particular, Tribes strongly opposed the proposed qualified $PM_{10-2.5}$ indicator and the proposed monitor site-suitability requirements, especially the requirement that monitors used for comparison with the NAAQS be located within urbanized areas with a minimum population of 100,000. Tribal commenters pointed out that this would virtually exclude Tribes from applying the $PM_{10-2.5}$ standards because very few Tribal sites would meet this criterion. Tribes stated that EPA had violated its Trust Responsibility to Tribes in three ways. First, the commenters claimed that EPA had failed to engage in meaningful consultation with Tribal leaders regarding the proposed qualified $PM_{10-2.5}$ indicator and other aspects of the proposed rule. Second, commenters claimed that the proposed 24-hour $PM_{10-2.5}$ standard would have serious adverse impacts on the existing level of health protection for Tribes. Third, Tribal commenters objected to the proposed exclusion of ''agricultural sources, mining sources, and other similar sources of crustal material'' from the proposed $PM_{10-2.5}$ indicator; like States, Tribes felt this provision was illegal and Tribal commenters argued this violated Tribal sovereignty. The EPA notes that its final decision to retain the current 24-hour PM_{10} standard, for the reasons noted above in Section III, without any qualifications or changes to the monitor siting requirements, effectively resolves the concerns raised by these commenters.

EPA has determined that this final rule does not have Tribal implications, as specified in Executive Order 13175. It does not have a substantial direct effect on one or more Indian Tribes, since Tribes are not obligated to adopt or implement any NAAQS. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, ''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 rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is subject to Executive Order 13045 because it is an economically significant regulatory action as defined by Executive Order 12866, and we believe that the environmental health risk addressed by this action may have a disproportionate effect on children. The NAAQS constitute uniform, national standards for PM pollution; these standards are designed to protect public health with an adequate margin of safety, as required by CAA section 109. However, the protection offered by these standards may be especially important for children because children, along with other sensitive population subgroups such as the elderly and people with existing heart or lung disease, are potentially susceptible to health effects resulting from PM exposure. Because children are considered a potentially susceptible population, we have carefully evaluated the environmental health effects of exposure to PM pollution among children. These effects and the size of the population affected are summarized in section 9.2.4 of the Criteria Document and section 3.5 of the Staff Paper, and the results of our evaluation of the effect of PM pollution on children are discussed in sections II and III of this preamble.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The purpose of this rule is to establish NAAQS for PM. The rule does not

prescribe specific pollution control strategies by which these ambient standards will be met. Such strategies will be developed by States on a case-by-case basis, and EPA cannot predict whether the control options selected by States will include regulations on energy suppliers, distributors, or users. Thus, EPA concludes that this rule is not likely to have any adverse energy effects and does not constitute a significant energy action as defined in Executive Order 13211.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer 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 standards.

The final rule establishes requirements for environmental monitoring and measurement. Specifically, it establishes the FRM for $PM_{10-2.5}$ measurement (and slightly amends the FRM for $PM_{2.5}$). The FRM is the benchmark against which all ambient monitoring methods are measured. While the FRM is not a voluntary consensus standard, the equivalency criteria established in 40 CFR part 53 do allow for the utilization of voluntary consensus standards if they meet the specified performance criteria.

To the extent feasible, EPA employs a Performance-Based Measurement System (PBMS), which does not require the use of specific, prescribed analytic methods. The PBMS is defined as a set of processes wherein the data quality needs, mandates or limitations of a program or project are specified, and serve as criteria for selecting appropriate methods to meet those needs in a cost-effective manner. It is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. Though the FRM requirements utilize performance standards for some aspects of monitor design, multiple performance standards defined for many combinations of PM type, concentration, and environmental conditions would be required to be sure that monitors certified to purely performance-based standards actually performed similarly in the field, which would in turn require extensive testing of each candidate monitor design. Therefore, it is not practically possible to fully define the FRM in performance terms. Nevertheless, our approach in the past has resulted in multiple brands of monitors qualifying as FRM for PM, and we expect this to continue. Also, the FRM described in this final rule and the equivalency criteria contained in the revisions to 40 CFR part 53 do constitute performance based criteria for the instruments that will actually be deployed for monitoring $PM_{10-2.5}$. Therefore, for most of the measurements that will be made and most of the measurement systems that make them, EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the specified performance criteria.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' requires Federal agencies to consider the impact of programs, policies, and activities on minority populations and low-income populations. According to EPA guidance, agencies are to assess whether minority or low-income populations face a risk or a rate of exposure to hazards that are significant and that ''appreciably exceeds or is likely to appreciably exceed the risk or rate to the general population or to the appropriate comparison group'' (EPA, 1998).

In accordance with Executive Order 12898, the Agency has considered whether these decisions may have disproportionate negative impacts on minority or low-income populations. This rule establishes uniform, national ambient air quality standards for particulate matter, and is not expected to have disproportionate negative impacts on minority or low income populations. The EPA notes that some commenters expressed concerns that EPA had failed to adequately assess the environmental justice implications of its proposed decisions, and that the proposed revisions to both the fine particle and coarse particle standards would violate the principles of environmental justice. In particular, numerous commenters criticized the proposed qualified $PM_{10-2.5}$ indicator, arguing that the exclusive urban focus of the indicator failed to protect large segments of the U.S. population (including Tribes and lower-income rural populations). The EPA believes that the final decision to retain the current nationally applicable 24-hour PM_{10} standard adequately addresses the concerns raised by these commenters, as discussed above in section III.

Further, some commenters were concerned that the proposed $PM_{2.5}$ standards would permit the continuation of disproportionate adverse health effects on minority and low-income populations because those populations are concentrated in urban areas where exposures are higher and are generally more susceptible (given lack of access to health care and prevalence of chronic conditions such as asthma). The EPA believes that the implications of the newly strengthened suite of $PM_{2.5}$ standards will reduce health risks precisely in the areas subject to the highest fine particle concentrations. Furthermore, the $PM_{2.5}$ NAAQS established in today's final rule are nationally uniform standards which in the Administrator's judgment protect public health with an adequate margin of safety. In making this determination, the Administrator expressly considered the available information regarding health effects among vulnerable and susceptible populations, such as those with preexisting conditions. Thus it remains EPA's conclusion that this rule is not expected to have disproportionate negative impacts on minority or low income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective December 18, 2006.

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List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Dated: September 21, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 50.3 is revised to read as follows:

§ 50.3 Reference conditions.

All measurements of air quality that are expressed as mass per unit volume (*e.g.*, micrograms per cubic meter) other than for the particulate matter ($PM_{2.5}$) standards contained in §§ 50.7 and 50.13 shall be corrected to a reference temperature of 25 (deg) C and a reference pressure of 760 millimeters of mercury (1,013.2 millibars). Measurements of $PM_{2.5}$ for purposes of comparison to the standards contained in §§ 50.7 and 50.13 shall be reported based on actual ambient air volume measured at the actual ambient temperature and pressure at the monitoring site during the measurement period.

§ 50.6 [Amended]

■ 3. Section 50.6 is amended by removing and reserving paragraph (b).

■ 4. A new § 50.13 is added to read as follows:

§ 50.13 National primary and secondary ambient air quality standards for $PM_{2.5}$.

(a) The national primary and secondary ambient air quality standards for particulate matter are 15.0 micrograms per cubic meter (μg/m³) annual arithmetic mean concentration, and 35 μg/m³ 24-hour average concentration measured in the ambient air as $PM_{2.5}$ (particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers) by either:

(1) A reference method based on appendix L of this part and designated in accordance with part 53 of this chapter; or

(2) An equivalent method designated in accordance with part 53 of this chapter.

(b) The annual primary and secondary $PM_{2.5}$ standards are met when the annual arithmetic mean concentration, as determined in accordance with appendix N of this part, is less than or equal to 15.0 μg/m³.

(c) The 24-hour primary and secondary $PM_{2.5}$ standards are met when the 98th percentile 24-hour concentration, as determined in accordance with appendix N of this part, is less than or equal to 35 μg/m³.

■ 5. Appendix K to Part 50 is revised to read as follows:

Appendix K to Part 50—Interpretation of the National Ambient Air Quality Standards for Particulate Matter

1.0 General

(a) This appendix explains the computations necessary for analyzing particulate matter data to determine attainment of the 24-hour standards specified in 40 CFR 50.6. For the primary and secondary standards, particulate matter is measured in the ambient air as PM_{10} (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) by a reference method based on appendix J of this part and designated in accordance with part 53 of this chapter, or by an equivalent method designated in accordance with part 53 of this chapter. The required frequency of measurements is specified in part 58 of this chapter.

(b) The terms used in this appendix are defined as follows:

Average refers to the arithmetic mean of the estimated number of exceedances per year, as per Section 3.1.

Daily value for PM_{10} refers to the 24-hour average concentration of PM_{10} calculated or measured from midnight to midnight (local time).

Exceedance means a daily value that is above the level of the 24-hour standard after rounding to the nearest 10 μg/m³ (*i.e.*, values ending in 5 or greater are to be rounded up).

Expected annual value is the number approached when the annual values from an increasing number of years are averaged, in the absence of long-term trends in emissions or meteorological conditions.

Year refers to a calendar year.

(c) Although the discussion in this appendix focuses on monitored data, the same principles apply to modeling data, subject to EPA modeling guidelines.

2.0 Attainment Determinations

2.1 24-Hour Primary and Secondary Standards

(a) Under 40 CFR 50.6(a) the 24-hour primary and secondary standards are attained when the expected number of exceedances per year at each monitoring site is less than or equal to one. In the simplest case, the number of expected exceedances at a site is determined by recording the number of exceedances in each calendar year and then averaging them over the past 3 calendar years. Situations in which 3 years of data are not available and possible adjustments for unusual events or trends are discussed in sections 2.3 and 2.4 of this appendix. Further, when data for a year are incomplete, it is necessary to compute an estimated number of exceedances for that year by adjusting the observed number of exceedances. This procedure, performed by calendar quarter, is described in section 3.0 of this appendix. The expected number of exceedances is then estimated by averaging the individual annual estimates for the past 3 years.

(b) The comparison with the allowable expected exceedance rate of one per year is made in terms of a number rounded to the nearest tenth (fractional values equal to or greater than 0.05 are to be rounded up; *e.g.*, an exceedance rate of 1.05 would be rounded to 1.1, which is the lowest rate for nonattainment).

2.2 Reserved

2.3 Data Requirements

(a) 40 CFR 58.12 specifies the required minimum frequency of sampling for PM_{10}. For the purposes of making comparisons with the particulate matter standards, all data produced by State and Local Air Monitoring Stations (SLAMS) and other sites submitted to EPA in accordance with the part 58 requirements must be used, and a minimum of 75 percent of the scheduled PM_{10} samples per quarter are required.

(b) To demonstrate attainment of the 24-hour standards at a monitoring site, the monitor must provide sufficient data to perform the required calculations of sections 3.0 and 4.0 of this appendix. The amount of data required varies with the sampling frequency, data capture rate and the number of years of record. In all cases, 3 years of representative monitoring data that meet the 75 percent criterion of the previous paragraph should be utilized, if available,

and would suffice. More than 3 years may be considered, if all additional representative years of data meeting the 75 percent criterion are utilized. Data not meeting these criteria may also suffice to show attainment; however, such exceptions will have to be approved by the appropriate Regional Administrator in accordance with EPA guidance.

(c) There are less stringent data requirements for showing that a monitor has failed an attainment test and thus has recorded a violation of the particulate matter standards. Although it is generally necessary to meet the minimum 75 percent data capture requirement per quarter to use the computational equations described in section 3.0 of this appendix, this criterion does not apply when less data is sufficient to unambiguously establish nonattainment. The following examples illustrate how nonattainment can be demonstrated when a site fails to meet the completeness criteria. Nonattainment of the 24-hour primary standards can be established by the observed annual number of exceedances (*e.g.*, four observed exceedances in a single year), or by the estimated number of exceedances derived from the observed number of exceedances and the required number of scheduled samples (*e.g.*, two observed exceedances with every other day sampling). In both cases, expected annual values must exceed the levels allowed by the standards.

2.4 Adjustment for Exceptional Events and Trends

(a) An exceptional event is an uncontrollable event caused by natural sources of particulate matter or an event that is not expected to recur at a given location. Inclusion of such a value in the computation of exceedances or averages could result in inappropriate estimates of their respective expected annual values. To reduce the effect of unusual events, more than 3 years of representative data may be used. Alternatively, other techniques, such as the use of statistical models or the use of historical data could be considered so that the event may be discounted or weighted according to the likelihood that it will recur. The use of such techniques is subject to the approval of the appropriate Regional Administrator in accordance with EPA guidance.

(b) In cases where long-term trends in emissions and air quality are evident, mathematical techniques should be applied to account for the trends to ensure that the expected annual values are not inappropriately biased by unrepresentative data. In the simplest case, if 3 years of data are available under stable emission conditions, this data should be used. In the event of a trend or shift in emission patterns, either the most recent representative year(s) could be used or statistical techniques or models could be used in conjunction with previous years of data to adjust for trends. The use of less than 3 years of data, and any adjustments are subject to the approval of the appropriate Regional Administrator in accordance with EPA guidance.

3.0 Computational Equations for the 24-Hour Standards

3.1 Estimating Exceedances for a Year

(a) If PM_{10} sampling is scheduled less frequently than every day, or if some scheduled samples are missed, a PM_{10} value will not be available for each day of the year. To account for the possible effect of incomplete data, an adjustment must be made to the data collected at each monitoring location to estimate the number of exceedances in a calendar year. In this adjustment, the assumption is made that the fraction of missing values that would have exceeded the standard level is identical to the fraction of measured values above this level. This computation is to be made for all sites that are scheduled to monitor throughout the entire year and meet the minimum data requirements of section 2.3 of this appendix. Because of possible seasonal imbalance, this adjustment shall be applied on a quarterly basis. The estimate of the expected number of exceedances for the quarter is equal to the observed number of exceedances plus an increment associated with the missing data. The following equation must be used for these computations:

Equation 1

$$e_q = v_q \times \left(\frac{N_q}{n_q} \right)$$

Where:

e_q = the estimated number of exceedances for calendar quarter q;
v_q = the observed number of exceedances for calendar quarter q;
N_q = the number of days in calendar quarter q;
n_q = the number of days in calendar quarter q with PM_{10} data; and
q = the index for calendar quarter, q = 1, 2, 3 or 4.

(b) The estimated number of exceedances for a calendar quarter must be rounded to the nearest hundredth (fractional values equal to or greater than 0.005 must be rounded up).

(c) The estimated number of exceedances for the year, e, is the sum of the estimates for each calendar quarter.

Equation 2

$$e = \sum_{q=1}^{4} e_q$$

(d) The estimated number of exceedances for a single year must be rounded to one decimal place (fractional values equal to or greater than 0.05 are to be rounded up). The expected number of exceedances is then estimated by averaging the individual annual estimates for the most recent 3 or more representative years of data. The expected number of exceedances must be rounded to one decimal place (fractional values equal to or greater than 0.05 are to be rounded up).

(e) The adjustment for incomplete data will not be necessary for monitoring or modeling data which constitutes a complete record, i.e., 365 days per year.

(f) To reduce the potential for overestimating the number of expected exceedances, the correction for missing data will not be required for a calendar quarter in which the first observed exceedance has occurred if:

(1) There was only one exceedance in the calendar quarter;

(2) Everyday sampling is subsequently initiated and maintained for 4 calendar quarters in accordance with 40 CFR 58.12; and

(3) Data capture of 75 percent is achieved during the required period of everyday sampling. In addition, if the first exceedance is observed in a calendar quarter in which the monitor is already sampling every day, no adjustment for missing data will be made to the first exceedance if a 75 percent data capture rate was achieved in the quarter in which it was observed.

Example 1

a. During a particular calendar quarter, 39 out of a possible 92 samples were recorded, with one observed exceedance of the 24-hour standard. Using Equation 1, the estimated number of exceedances for the quarter is:

$e_q = 1 \times 92/39 = 2.359$ or 2.36.

b. If the estimated exceedances for the other 3 calendar quarters in the year were 2.30, 0.0 and 0.0, then, using Equation 2, the estimated number of exceedances for the year is 2.36 + 2.30 + 0.0 + 0.0 which equals 4.66 or 4.7. If no exceedances were observed for the 2 previous years, then the expected number of exceedances is estimated by: (⅓) × (4.7 + 0 + 0) = 1.57 or 1.6. Since 1.6 exceeds the allowable number of expected exceedances, this monitoring site would fail the attainment test.

Example 2

In this example, everyday sampling was initiated following the first observed exceedance as required by 40 CFR 58.12. Accordingly, the first observed exceedance would not be adjusted for incomplete sampling. During the next three quarters, 1.2 exceedances were estimated. In this case, the estimated exceedances for the year would be 1.0 + 1.2 + 0.0 + 0.0 which equals 2.2. If, as before, no exceedances were observed for the two previous years, then the estimated exceedances for the 3-year period would then be (⅓) × (2.2 + 0.0 + 0.0) = 0.7, and the monitoring site would not fail the attainment test.

3.2 Adjustments for Non-Scheduled Sampling Days

(a) If a systematic sampling schedule is used and sampling is performed on days in addition to the days specified by the systematic sampling schedule, e.g., during episodes of high pollution, then an adjustment must be made in the equation for the estimation of exceedances. Such an adjustment is needed to eliminate the bias in the estimate of the quarterly and annual number of exceedances that would occur if the chance of an exceedance is different for scheduled than for non-scheduled days, as would be the case with episode sampling.

(b) The required adjustment treats the systematic sampling schedule as a stratified sampling plan. If the period from one

scheduled sample until the day preceding the next scheduled sample is defined as a sampling stratum, then there is one stratum for each scheduled sampling day. An average number of observed exceedances is computed for each of these sampling strata. With nonscheduled sampling days, the estimated number of exceedances is defined as:

Equation 3

$$e_q = \left(\frac{N_q}{m_q}\right) \times \sum_{j=1}^{m_q} \left(\frac{v_j}{k_j}\right)$$

Where:

e_q = the estimated number of exceedances for the quarter;

N_q = the number of days in the quarter;

m_q = the number of strata with samples during the quarter;

v_j = the number of observed exceedances in stratum j; and

k_j = the number of actual samples in stratum j.

(c) Note that if only one sample value is recorded in each stratum, then Equation 3 reduces to Equation 1.

Example 3

A monitoring site samples according to a systematic sampling schedule of one sample every 6 days, for a total of 15 scheduled samples in a quarter out of a total of 92 possible samples. During one 6-day period, potential episode levels of PM_{10} were suspected, so 5 additional samples were taken. One of the regular scheduled samples was missed, so a total of 19 samples in 14 sampling strata were measured. The one 6-day sampling stratum with 6 samples recorded 2 exceedances. The remainder of the quarter with one sample per stratum recorded zero exceedances. Using Equation 3, the estimated number of exceedances for the quarter is:

$$Eq = (92/14) \times (2/6 + 0 + . \ . \ . + 0) = 2.19.$$

■ 6. Appendix L to part 50 is amended by:

■ a. Revising section 1.1;

■ b. Revising the heading of section 7.3.4 and adding introductory text;

■ c. Revising paragraph (a) of section 7.3.4.3:

■ d. Adding section 7.3.4.4;

■ e. Revising Table L–1 in section 7.4.19;

■ f. Revising section 8.3.6;

■ g. Revising the first sentence in section 10.10 and revising section 10.13; and

■ h. Revising reference 2 in section 13.0 to read as follows:

Appendix L to Part 50—Reference Method for the Determination of Fine Particulate Matter as $PM_{2.5}$ in the Atmosphere

1.0 Applicability.

1.1 This method provides for the measurement of the mass concentration of fine particulate matter having an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$) in ambient air over a 24-hour period for purposes of determining whether the primary and secondary national ambient air quality standards for fine particulate matter specified in § 50.7 and § 50.13 of this part are met. The measurement process is considered to be nondestructive, and the $PM_{2.5}$ sample obtained can be subjected to subsequent physical or chemical analyses. Quality assessment procedures are provided in part 58, appendix A of this chapter, and quality assurance guidance are provided in references 1, 2, and 3 in section 13.0 of this appendix.

* * * * *

7.3.4 *Particle size separator.* The sampler shall be configured with either one of the two alternative particle size separators described in this section 7.3.4. One separator is an impactor-type separator (WINS impactor) described in sections 7.3.4.1, 7.3.4.2, and 7.3.4.3 of this appendix. The alternative separator is a cyclone-type separator (VSCC™) described in section 7.3.4.4 of this appendix.

* * * * *

7.3.4.3 * * *

(a) Composition. Dioctyl sebacate (DOS), single-compound diffusion oil.

* * * * *

7.3.4.4 The cyclone-type separator is identified as a BGI VSCC™ Very Sharp Cut Cyclone particle size separator specified as part of EPA-designated equivalent method EQPM–0202–142 (67 FR 15567, April 2, 2002) and as manufactured by BGI Incorporated, 58 Guinan Street, Waltham, Massachusetts 20451.

* * * * *

7.4.19 * * *

TABLE L–1 TO APPENDIX L OF PART 50.—SUMMARY OF INFORMATION TO BE PROVIDED BY THE SAMPLER

Information to be provided	Appendix L section reference	Availability			Format		
		Anytime [1]	End of period [2]	Visual display [3]	Data output [4]	Digital reading [5]	Units
Flow rate, 30-second maximum interval	7.4.5.1	✓		✓	*	XX.X	L/min
Flow rate, average for the sample period	7.4.5.2	*	✓	*	✓	XX.X	L/min
Flow rate, CV, for sample period	7.4.5.2	*	✓	*	✓	XX.X	%
Flow rate, 5-min. average out of spec. (FLAG [6])	7.4.5.2	✓	✓	✓	✓■	On/Off	
Sample volume, total	7.4.5.2	*	✓	✓	✓	XX.X	m^3
Temperature, ambient, 30-second interval	7.4.8	✓		✓		XX.X	°C
Temperature, ambient, min., max., average for the sample period	7.4.8	*	✓	✓	{■	XX.X	°C
Baro. pressure, ambient, 30-second interval	7.4.9	✓		✓		XXX	mm Hg
Baro. pressure, ambient, min., max., average for the sample period	7.4.9	*	✓	✓	✓■	XXX	mm Hg
Filter temperature, 30-second interval	7.4.11	✓		✓		XX.X	°C
Filter temp. differential, 30-second interval, out of spec. (FLAG [6])	7.4.11	*	✓	✓	✓■	On/Off	
Filter temp., maximum differential from ambient, date, time of occurrence	7.4.11	*	*	*	*	X.X, YY/MM/DD HH.mm.	°C, Yr/Mon/Day Hrs. min
Date and Time	7.4.12	✓		✓		YY/MM/DD HH.mm.	Yr/Mon/Day Hrs. min
Sample start and stop time settings	7.4.12	✓	✓	✓	✓	YY/MM/DD HH.mm.	Yr/Mon/Day Hrs. min
Sample period start time	7.4.12		✓	✓	✓	YY/MM/DD HH.mm.	Yr/Mon/Day Hrs. min

TABLE L–1 TO APPENDIX L OF PART 50.—SUMMARY OF INFORMATION TO BE PROVIDED BY THE SAMPLER—Continued

Information to be provided	Appendix L section reference	Availability			Format		
		Anytime [1]	End of period [2]	Visual display [3]	Data output [4]	Digital reading [5]	Units
Elapsed sample time	7.4.13	*	✓	✓	✓	HH.mm	Hrs. min
Elapsed sample time, out of spec. (FLAG [6])	7.4.13		✓	✓	✓■	On/Off	
Power interruptions ≤1 min., start time of first 10	7.4.15.5	*	✓	*	✓	1HH.mm, 2HH.mm, etc..	Hrs. min
User-entered information, such as sampler and site identification	7.4.16	✓	✓	✓	✓■	As entered.	

✓ Provision of this information is required.

* Provision of this information is optional. If information related to the entire sample period is optionally provided prior to the end of the sample period, the value provided should be the value calculated for the portion of the sampler period completed up to the time the information is provided.

■ Indicates that this information is also required to be provided to the Air Quality System (AQS) data bank; see § 58.16 of this chapter. For ambient temperature and barometric pressure, only the average for the sample period must be reported.

1. Information is required to be available to the operator at any time the sampler is operating, whether sampling or not.

2. Information relates to the entire sampler period and must be provided following the end of the sample period until reset manually by the operator or automatically by the sampler upon the start of a new sample period.

3. Information shall be available to the operator visually.

4. Information is to be available as digital data at the sampler's data output port specified in section 7.4.16 of this appendix following the end of the sample period until reset manually by the operator or automatically by the sampler upon the start of a new sample period.

5. Digital readings, both visual and data output, shall have not less than the number of significant digits and resolution specified.

6. Flag warnings may be displayed to the operator by a single flag indicator or each flag may be displayed individually. Only a set (on) flag warning must be indicated; an off (unset) flag may be indicated by the absence of a flag warning. Sampler users should refer to section 10.12 of this appendix regarding the validity of samples for which the sampler provided an associated flag warning.

* * * * *

8.3.6 The post-sampling conditioning and weighing shall be completed within 240 hours (10 days) after the end of the sample period, unless the filter sample is maintained at temperatures below the average ambient temperature during sampling (or 4 °C or below for average sampling temperatures less than 4 °C) during the time between retrieval from the sampler and the start of the conditioning, in which case the period shall not exceed 30 days. Reference 2 in section 13.0 of this appendix has additional guidance on transport of cooled filters.

* * * * *

10.10 Within 177 hours (7 days, 9 hours) of the end of the sample collection period, the filter, while still contained in the filter cassette, shall be carefully removed from the sampler, following the procedure provided in the sampler operation or instruction manual and the quality assurance program, and placed in a protective container. * * *

* * * * *

10.13 After retrieval from the sampler, the exposed filter containing the $PM_{2.5}$ sample should be transported to the filter conditioning environment as soon as possible, ideally to arrive at the conditioning environment within 24 hours for conditioning and subsequent weighing. During the period between filter retrieval from the sampler and the start of the conditioning, the filter shall be maintained as cool as practical and continuously protected from exposure to temperatures over 25 °C to protect the integrity of the sample and minimize loss of volatile components during transport and storage. See section 8.3.6 of this appendix regarding time limits for completing the post-sampling weighing. See reference 2 in section 13.0 of this appendix for additional guidance on transporting filter samplers to the conditioning and weighing laboratory.

* * * * *

13.0 References

* * * * *

2. Quality Assurance Guidance Document 2.12. Monitoring $PM_{2.5}$ in Ambient Air Using Designated Reference or Class I Equivalent Methods. U.S. EPA, National Exposure Research Laboratory. Research Triangle Park, NC, November 1988 or later edition. Currently available at: *http://www.epa.gov/ttn/amtic/pmqainf.html*.

* * * * *

■ 7. Appendix N to part 50 is revised to read as follows:

Appendix N to Part 50—Interpretation of the National Ambient Air Quality Standards for $PM_{2.5}$

1. General

(a) This appendix explains the data handling conventions and computations necessary for determining when the annual and 24-hour primary and secondary national ambient air quality standards (NAAQS) for $PM_{2.5}$ specified in § 50.7 and § 50.13 of this part are met. $PM_{2.5}$, defined as particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers, is measured in the ambient air by a Federal reference method (FRM) based on appendix L of this part, as applicable, and designated in accordance with part 53 of this chapter, or by a Federal equivalent method (FEM) designated in accordance with part 53 of this chapter, or by an Approved Regional Method (ARM) designated in accordance with part 58 of this chapter. Data handling and computation procedures to be used in making comparisons between reported $PM_{2.5}$ concentrations and the levels of the $PM_{2.5}$ NAAQS are specified in the following sections.

(b) Data resulting from exceptional events, for example structural fires or high winds, may be given special consideration. In some cases, it may be appropriate to exclude these data in whole or part because they could result in inappropriate values to compare with the levels of the $PM_{2.5}$ NAAQS. In other cases, it may be more appropriate to retain the data for comparison with the levels of the $PM_{2.5}$ NAAQS and then for EPA to formulate the appropriate regulatory response.

(c) The terms used in this appendix are defined as follows:

Annual mean refers to a weighted arithmetic mean, based on quarterly means, as defined in section 4.4 of this appendix.

Creditable samples are samples that are given credit for data completeness. They include valid samples collected on required sampling days and valid ''make-up'' samples taken for missed or invalidated samples on required sampling days.

Daily values for $PM_{2.5}$ refers to the 24-hour average concentrations of $PM_{2.5}$ calculated (averaged from hourly measurements) or measured from midnight to midnight (local standard time) that are used in NAAQS computations.

Designated monitors are those monitoring sites designated in a State or local agency PM Monitoring Network Description in accordance with part 58 of this chapter.

Design values are the metrics (i.e., statistics) that are compared to the NAAQS levels to determine compliance, calculated as shown in section 4 of this appendix:

(1) The 3-year average of annual means for a single monitoring site or a group of monitoring sites (referred to as the ''*annual standard design value*''). If spatial averaging

has been approved by EPA for a group of sites which meet the criteria specified in section 2(b) of this appendix and section 4.7.5 of appendix D of 40 CFR part 58, then 3 years of spatially averaged annual means will be averaged to derive the *annual standard design value* for that group of sites (further referred to as the ''*spatially averaged annual standard design value*''). Otherwise, the annual standard design value will represent the 3-year average of annual means for a single site (further referred to as the ''*single site annual standard design value*'').

(2) The 3-year average of annual 98th percentile 24-hour average values recorded at each monitoring site (referred to as the ''*24-hour standard design value*'').

Extra samples are non-creditable samples. They are daily values that do not occur on scheduled sampling days and that can not be used as make-ups for missed or invalidated scheduled samples. Extra samples are used in mean calculations and are subject to selection as a 98th percentile.

Make-up samples are samples taken to supplant missed or invalidated required scheduled samples. Make-ups can be made by either the primary or the collocated instruments. Make-up samples are either taken before the next required sampling day or exactly one week after the missed (or voided) sampling day. Also, to be considered a valid make-up, the sampling must be administered according to EPA guidance.

98th percentile is the daily value out of a year of $PM_{2.5}$ monitoring data below which 98 percent of all daily values fall.

Year refers to a calendar year.

2.0 Monitoring Considerations.

(a) Section 58.30 of this chapter specifies which monitoring locations are eligible for making comparisons with the $PM_{2.5}$ standards.

(b) To qualify for spatial averaging, monitoring sites must meet the criterion specified in section 4.7.5 of appendix D of 40 CFR part 58 as well as the following requirements:

(1) The annual mean concentration at each site shall be within 10 percent of the spatially averaged annual mean.

(2) The daily values for each site pair among the 3-year period shall yield a correlation coefficient of at least 0.9 for each calendar quarter.

(3) All of the monitoring sites should principally be affected by the same major emission sources of $PM_{2.5}$. For example, this could be demonstrated by site-specific chemical speciation profiles confirming all major component concentration averages to be within 10 percent for each calendar quarter.

(4) The requirements in paragraphs (b)(1) through (3) of this section shall be met for 3 consecutive years in order to produce a valid spatially averaged annual standard design value. Otherwise, the individual (single) site annual standard design values shall be compared directly to the level of the annual NAAQS.

(c) Section 58.12 of this chapter specifies the required minimum frequency of sampling for $PM_{2.5}$. Exceptions to the specified sampling frequencies, such as a reduced frequency during a season of expected low concentrations (i.e., ''seasonal sampling''), are subject to the approval of EPA. Annual 98th percentile values are to be calculated according to equation 6 in section 4.5 of this appendix when a site operates on a ''seasonal sampling'' schedule.

3.0 Requirements for Data Used for Comparisons With the $PM_{2.5}$ NAAQS and Data Reporting Considerations.

(a) Except as otherwise provided in this appendix, only valid FRM/FEM/ARM $PM_{2.5}$ data required to be submitted to EPA's Air Quality System (AQS) shall be used in the design value calculations.

(b) $PM_{2.5}$ measurement data (typically hourly for continuous instruments and daily for filter-based instruments) shall be reported to AQS in micrograms per cubic meter ($\mu g/m^3$) to one decimal place, with additional digits to the right being truncated.

(c) Block 24-hour averages shall be computed from available hourly $PM_{2.5}$ concentration data for each corresponding day of the year and the result shall be stored in the first, or start, hour (i.e., midnight, hour '0') of the 24-hour period. A 24-hour average shall be considered valid if at least 75 percent (i.e., 18) of the hourly averages for the 24-hour period are available. In the event that less than all 24 hourly averages are available (i.e., less than 24, but at least 18), the 24-hour average shall be computed on the basis of the hours available using the number of available hours as the divisor (e.g., 19). 24-hour periods with seven or more missing hours shall be considered valid if, after substituting zero for all missing hourly concentrations, the 24-hour average concentration is greater than the level of the standard. The computed 24-hour average $PM_{2.5}$ concentrations shall be reported to one decimal place (the additional digits to the right of the first decimal place are truncated, consistent with the data handling procedures for the reported data).

(d) Except for calculation of spatially averaged annual means and spatially averaged annual standard design values, all other calculations shown in this appendix shall be implemented on a site-level basis. Site level data shall be processed as follows:

(1) The default dataset for a site shall consist of the measured concentrations recorded from the designated primary FRM/FEM/ARM monitor. The primary monitor shall be designated in the appropriate State or local agency PM Monitoring Network Description. All daily values produced by the primary sampler are considered part of the site record (i.e., that site's daily value); this includes all creditable samples and all extra samples.

(2) Data for the primary monitor shall be augmented as much as possible with data from collocated FRM/FEM/ARM monitors. If a valid 24-hour measurement is not produced from the primary monitor for a particular day (scheduled or otherwise), but a valid sample is generated by a collocated FRM/FEM/ARM instrument (and recorded in AQS), then that collocated value shall be considered part of the site data record (i.e., that site's daily value). If more than one valid collocated FRM/FEM/ARM value is available, the average of those valid collocated values shall be used as the daily value.

(e) All daily values in the composite site record are used in annual mean and 98th percentile calculations, however, not all daily values are give credit towards data completeness requirements. Only ''creditable'' samples are given credit for data completeness. Creditable samples include valid samples on scheduled sampling days and valid make-up samples. All other types of daily values are referred to as ''extra'' samples.

4.0 Comparisons With the $PM_{2.5}$ NAAQS.

4.1 Annual $PM_{2.5}$ NAAQS.

(a) The annual $PM_{2.5}$ NAAQS is met when the annual standard design value is less than or equal to 15.0 micrograms per cubic meter ($\mu g/m^3$).

(b) For single site comparisons, 3 years of valid annual means are required to produce a valid annual standard design value. In the case of spatial averaging, 3 years of valid spatially averaged annual means are required to produce a valid annual standard design value. Designated sites with less than 3 years of data shall be included in annual spatial averages for those years that data completeness requirements are met. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. [Quarterly data capture rates (expressed as a percentage) are specifically calculated as the number of creditable samples for the quarter divided by the number of scheduled samples for the quarter, the result then multiplied by 100 and rounded to the nearest integer.] However, years with at least 11 samples in each quarter shall be considered valid, notwithstanding quarters with less than complete data, if the resulting annual mean, spatially averaged annual mean concentration, or resulting annual standard design value concentration (rounded according to the conventions of section 4.3 of this appendix) is greater than the level of the standard. Furthermore, where the explicit 11 sample per quarter requirement is not met, the site annual mean shall still be considered valid if, by substituting a low value (described below) for the missing data in the deficient quarters (substituting enough to meet the 11 sample minimum), the computation still yields a recalculated annual mean, spatially averaged annual mean concentration, or annual standard design value concentration over the level of the standard. The low value used for this substitution test shall be the lowest reported daily value in the site data record for that calendar quarter over the most recent 3-year period. If an annual mean is deemed complete using this test, the original annual mean (without substituted low values) shall be considered the official mean value for this site, not the result of the recalculated test using the low values.

(c) The use of less than complete data is subject to the approval of EPA, which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data.

(d) The equations for calculating the annual standard design values are given in section 4.4 of this appendix.

4.2 24-Hour $PM_{2.5}$ NAAQS.

(a) The 24-hour $PM_{2.5}$ NAAQS is met when the 24-hour standard design value at each monitoring site is less than or equal to 35 μg/m³. This comparison shall be based on 3 consecutive, complete years of air quality data. A year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. However, years shall be considered valid, notwithstanding quarters with less than complete data (even quarters with less than 11 samples), if the resulting annual 98th percentile value or resulting 24-hour standard design value (rounded according to the conventions of section 4.3 of this appendix) is greater than the level of the standard.

(b) The use of less than complete data is subject to the approval of EPA which may consider factors such as monitoring site closures/moves, monitoring diligence, and nearby concentrations in determining whether to use such data for comparisons to the NAAQS.

(c) The equations for calculating the 24-hour standard design values are given in section 4.5 of this appendix.

4.3 *Rounding Conventions.* For the purposes of comparing calculated values to the applicable level of the standard, it is necessary to round the final results of the calculations described in sections 4.4 and 4.5 of this appendix. Results for all intermediate calculations shall not be rounded.

(a) Annual $PM_{2.5}$ standard design values shall be rounded to the nearest 0.1 μg/m³ (decimals 0.05 and greater are rounded up to the next 0.1, and any decimal lower than 0.05 is rounded down to the nearest 0.1).

(b) 24-hour $PM_{2.5}$ standard design values shall be rounded to the nearest 1 μg/m³ (decimals 0.5 and greater are rounded up to the nearest whole number, and any decimal lower than 0.5 is rounded down to the nearest whole number).

4.4 Equations for the Annual $PM_{2.5}$ NAAQS.

(a) An annual mean value for $PM_{2.5}$ is determined by first averaging the daily values of a calendar quarter using equation 1 of this appendix:

Equation 1

$$\bar{X}_{q,y,s} = \frac{1}{n_q}\sum_{i=1}^{n_q} X_{i,q,y,s}$$

Where:

$\bar{X}_{q,y,s}$ = the mean for quarter q of the year y for site s;

n_q = the number of daily values in the quarter; and

$x_{i\ q,y,s}$ = the ith value in quarter q for year y for site s.

(b) Equation 2 of this appendix is then used to calculate the site annual mean:

Equation 2

$$\bar{X}_{y,s} = \frac{1}{4}\sum_{q=1}^{4} \bar{X}_{q,y,s}$$

Where:

$\bar{X}_{y,s}$ = the annual mean concentration for year y (y = 1, 2, or 3) and for site s; and

$\bar{X}_{q,y,s}$ = the mean for quarter q of year y for site s.

(c) If spatial averaging is utilized, the site-based annual means will then be averaged together to derive the spatially averaged annual mean using equation 3 of this appendix. Otherwise (i.e., for single site comparisons), skip to equation 4.B of this appendix.

Equation 3

$$\bar{x}_y = \frac{1}{n_s}\sum_{s=1}^{n_s} \bar{x}_{y,s}$$

Where:

$\bar{x}_y$ = the spatially averaged mean for year y,

$\bar{x}_{y,s}$ = the annual mean for year y and site s for sites designated to be averaged that meet completeness criteria , and

n_s = the number of sites designated to be averaged that meet completeness criteria.

(d) The annual standard design value is calculated using equation 4A of this appendix when spatial averaging and equation 4B of this appendix when not spatial averaging:

Equation 4A

When spatial averaging

$$\bar{x} = \frac{1}{3}\sum_{y=1}^{3} \bar{x}_y$$

Equation 4B

When not spatial averaging

$$\bar{x} = \frac{1}{3}\sum_{y=1}^{3} \bar{x}_{y,s}$$

Where:

$\bar{x}$ = the annual standard design value (the spatially averaged annual standard design value for equation 4A of this appendix and the single site annual standard design value for equation 4B of this appendix); and

$\bar{x}_y$ = the spatially averaged annual mean for year y (result of equation 3 of this appendix) when spatial averaging is used, or

$\bar{x}_{y,s}$ the annual mean for year y and site s (result of equation 2 of this appendix) when spatial averaging is not used.

(e) The annual standard design value is rounded according to the conventions in section 4.3 of this appendix before a comparison with the standard is made.

4.5 Equations for the 24-Hour $PM_{2.5}$ NAAQS

(a) When the data for a particular site and year meet the data completeness requirements in section 4.2 of this appendix, calculation of the 98th percentile is accomplished by the steps provided in this subsection. Equation 5 of this appendix shall be used to compute annual 98th percentile values, except that where a site operates on an approved seasonal sampling schedule, equation 6 of this appendix shall be used instead.

(1) *Regular formula for computing annual 98th percentile values.* Calculation of annual 98th percentile values using the regular formula (equation 5) will be based on the creditable number of samples (as described below), rather than on the actual number of samples. Credit will not be granted for extra (non-creditable) samples. Extra samples, however, are candidates for selection as the annual 98th percentile. [The creditable number of samples will determine how deep to go into the data distribution, but all samples (creditable and extra) will be considered when making the percentile assignment.] The annual creditable number of samples is the sum of the four quarterly creditable number of samples. Sort all the daily values from a particular site and year by ascending value. (For example: (x[1], x[2], x[3], * * *, x[n]). In this case, x[1] is the smallest number and x[n] is the largest value.) The 98th percentile is determined from this sorted series of daily values which is ordered from the lowest to the highest number. Compute (0.98) x (cn) as the number ''i.d,'' where 'cn' is the annual creditable number of samples, ''i'' is the integer part of the result, and ''d'' is the decimal part of the result. The 98th percentile value for year y, $P_{0.98,\ y}$, is calculated using equation 5 of this appendix:

Equation 5

$$P_{0.98,y} = X_{[i+1]}$$

Where:

$P_{0.98,\ y}$ = 98th percentile for year y;

$x_{[i+1]}$ = the $(i+1)^{th}$ number in the ordered series of numbers;

i = the integer part of the product of 0.98 and cn.

(2) Formula for computing annual 98th percentile values when sampling frequencies are seasonal. Calculate the annual 98th percentiles by determining the smallest measured concentration, x, that makes W(x) greater than 0.98 using equation 6 of this appendix:

Equation 6

$$W(x) = \frac{d_{High}}{d_{High} + d_{Low}} F_{High}(x) + \frac{d_{Low}}{d_{High} + d_{Low}} F_{Low}(x)$$

Where:

d_{High} = number of calendar days in the ''High'' season;

d_{Low} = number of calendar days in the ''Low'' season;

d_{High}+ = days in a year; and

d_{Low}

$$F_a(x) = \frac{\text{number of daily values in season a that are} \leq \times}{\text{number of daily values in season a}}$$

Such that ''a'' can be either ''High'' or ''Low''; ''x'' is the measured concentration; and ''$d_{High}/(d_{High} + d_{Low})$ and $d_{Low}/(d_{High} + d_{Low})$'' are constant and are called seasonal ''weights.''

(b) The 24-hour standard design value is then calculated by averaging the annual 98th percentiles using equation 7 of this appendix:

Equation 7

$$P_{0.98} = \frac{\sum_{y=1}^{3} P_{0.98,y}}{3}$$

(c) The 24-hour standard design value (3-year average 98th percentile) is rounded according to the conventions in section 4.3 of this appendix before a comparison with the standard is made.

■ 8. Appendix O is added to part 50 to read as follows:

Appendix O to Part 50—Reference Method for the Determination of Coarse Particulate Matter as $PM_{10-2.5}$ in the Atmosphere

1.0 Applicability and Definition

1.1 This method provides for the measurement of the mass concentration of coarse particulate matter ($PM_{10-2.5}$) in ambient air over a 24-hour period. In conjunction with additional analysis, this method may be used to develop speciated data.

1.2 For the purpose of this method, $PM_{10-2.5}$ is defined as particulate matter having an aerodynamic diameter in the nominal range of 2.5 to 10 micrometers, inclusive.

1.3 For this reference method, $PM_{10-2.5}$ concentrations shall be measured as the arithmetic difference between separate but concurrent, collocated measurements of PM_{10} and $PM_{2.5}$, where the PM_{10} measurements are obtained with a specially approved sampler, identified as a ''PM_{10c} sampler,'' that meets more demanding performance requirements than conventional PM_{10} samplers described in appendix J of this part. Measurements obtained with a PM_{10c} sampler are identified as ''PM_{10c} measurements'' to distinguish them from conventional PM_{10} measurements obtained with conventional PM_{10} samplers. Thus, $PM_{10-2.5} = PM_{10c} - PM_{2.5}$.

1.4 The PM_{10c} and $PM_{2.5}$ gravimetric measurement processes are considered to be nondestructive, and the PM_{10c} and $PM_{2.5}$ samples obtained in the $PM_{10-2.5}$ measurement process can be subjected to subsequent physical or chemical analyses.

1.5 Quality assessment procedures are provided in part 58, appendix A of this chapter. The quality assurance procedures and guidance provided in reference 1 in section 13 of this appendix, although written specifically for $PM_{2.5}$, are generally applicable for PM_{10c}, and, hence, $PM_{10-2.5}$ measurements under this method, as well.

1.6 A method based on specific model PM_{10c} and $PM_{2.5}$ samplers will be considered a reference method for purposes of part 58 of this chapter only if:

(a) The PM_{10c} and $PM_{2.5}$ samplers and the associated operational procedures meet the requirements specified in this appendix and all applicable requirements in part 53 of this chapter, and

(b) The method based on the specific samplers and associated operational procedures have been designated as a reference method in accordance with part 53 of this chapter.

1.7 $PM_{10-2.5}$ methods based on samplers that meet nearly all specifications set forth in this method but have one or more significant but minor deviations or modifications from those specifications may be designated as ''Class I'' equivalent methods for $PM_{10-2.5}$ in accordance with part 53 of this chapter.

1.8 $PM_{2.5}$ measurements obtained incidental to the $PM_{10-2.5}$ measurements by this method shall be considered to have been obtained with a reference method for $PM_{2.5}$ in accordance with appendix L of this part.

1.9 PM_{10c} measurements obtained incidental to the $PM_{10-2.5}$ measurements by this method shall be considered to have been obtained with a reference method for PM_{10} in accordance with appendix J of this part, provided that:

(a) The PM_{10c} measurements are adjusted to EPA reference conditions (25 °C and 760 millimeters of mercury), and

(b) Such PM_{10c} measurements are appropriately identified to differentiate them from PM_{10} measurements obtained with other (conventional) methods for PM_{10} designated in accordance with part 53 of this chapter as reference or equivalent methods for PM_{10}.

2.0 Principle

2.1 Separate, collocated, electrically powered air samplers for PM_{10c} and $PM_{2.5}$ concurrently draw ambient air at identical, constant volumetric flow rates into specially shaped inlets and through one or more inertial particle size separators where the suspended particulate matter in the PM_{10} or $PM_{2.5}$ size range, as applicable, is separated for collection on a polytetrafluoroethylene (PTFE) filter over the specified sampling period. The air samplers and other aspects of this $PM_{10-2.5}$ reference method are specified either explicitly in this appendix or by reference to other applicable regulations or quality assurance guidance.

2.2 Each PM_{10c} and $PM_{2.5}$ sample collection filter is weighed (after moisture and temperature conditioning) before and after sample collection to determine the net weight (mass) gain due to collected PM_{10c} or $PM_{2.5}$. The total volume of air sampled by each sampler is determined by the sampler from the measured flow rate at local ambient temperature and pressure and the sampling time. The mass concentrations of both PM_{10c} and $PM_{2.5}$ in the ambient air are computed as the total mass of collected particles in the PM_{10} or $PM_{2.5}$ size range, as appropriate, divided by the total volume of air sampled by the respective samplers, and expressed in micrograms per cubic meter ($\mu g/m^3$)at local temperature and pressure conditions. The mass concentration of $PM_{10-2.5}$ is determined as the PM_{10c} concentration value less the corresponding, concurrently measured $PM_{2.5}$ concentration value.

2.3 Most requirements for $PM_{10-2.5}$ reference methods are similar or identical to the requirements for $PM_{2.5}$ reference methods as set forth in appendix L to this part. To insure uniformity, applicable appendix L requirements are incorporated herein by reference in the sections where indicated rather than repeated in this appendix.

3.0 $PM_{10-2.5}$ Measurement Range

3.1 *Lower concentration limit.* The lower detection limit of the mass concentration measurement range is estimated to be approximately 3 $\mu g/m^3$, based on the observed precision of $PM_{2.5}$ measurements in the national $PM_{2.5}$ monitoring network, the probable similar level of precision for the matched PM_{10c} measurements, and the additional variability arising from the differential nature of the measurement process. This value is provided merely as a guide to the significance of low $PM_{10-2.5}$ concentration measurements.

3.2 *Upper concentration limit.* The upper limit of the mass concentration range is determined principally by the PM_{10c} filter

mass loading beyond which the sampler can no longer maintain the operating flow rate within specified limits due to increased pressure drop across the loaded filter. This upper limit cannot be specified precisely because it is a complex function of the ambient particle size distribution and type, humidity, the individual filter used, the capacity of the sampler flow rate control system, and perhaps other factors. All PM_{10c} samplers are estimated to be capable of measuring 24-hour mass concentrations of at least 200 μg/m³ while maintaining the operating flow rate within the specified limits. The upper limit for the $PM_{10-2.5}$ measurement is likely to be somewhat lower because the $PM_{10-2.5}$ concentration represents only a fraction of the PM_{10} concentration.

3.3 *Sample period.* The required sample period for $PM_{10-2.5}$ concentration measurements by this method shall be at least 1,380 minutes but not more than 1,500 minutes (23 to 25 hours), and the start times of the $PM_{2.5}$ and PM_{10c} samples are within 10 minutes and the stop times of the samples are also within 10 minutes (see section 10.4 of this appendix).

4.0 Accuracy (bias)

4.1 Because the size, density, and volatility of the particles making up ambient particulate matter vary over wide ranges and the mass concentration of particles varies with particle size, it is difficult to define the accuracy of $PM_{10-2.5}$ measurements in an absolute sense. Furthermore, generation of credible $PM_{10-2.5}$ concentration standards at field monitoring sites and presenting or introducing such standards reliably to samplers or monitors to assess accuracy is still generally impractical. The accuracy of $PM_{10-2.5}$ measurements is therefore defined in a relative sense as bias, referenced to measurements provided by other reference method samplers or based on flow rate verification audits or checks, or on other performance evaluation procedures.

4.2 Measurement system bias for monitoring data is assessed according to the procedures and schedule set forth in part 58, appendix A of this chapter. The goal for the measurement uncertainty (as bias) for monitoring data is defined in part 58, appendix A of this chapter as an upper 95 percent confidence limit for the absolute bias of 15 percent. Reference 1 in section 13 of this appendix provides additional information and guidance on flow rate accuracy audits and assessment of bias.

5.0 Precision

5.1 Tests to establish initial measurement precision for each sampler of the reference method sampler pair are specified as a part of the requirements for designation as a reference method under part 53 of this chapter.

5.2 Measurement system precision is assessed according to the procedures and schedule set forth in appendix A to part 58 of this chapter. The goal for acceptable measurement uncertainty, as precision, of monitoring data is defined in part 58, appendix A of this chapter as an upper 95 percent confidence limit for the coefficient of variation (CV) of 15 percent. Reference 1 in section 13 of this appendix provides additional information and guidance on this requirement.

6.0 *Filters for PM_{10c} and $PM_{2.5}$ Sample Collection.* Sample collection filters for both PM_{10c} and $PM_{2.5}$ measurements shall be identical and as specified in section 6 of appendix L to this part.

7.0 *Sampler.* The $PM_{10-2.5}$ sampler shall consist of a PM_{10c} sampler and a $PM_{2.5}$ sampler, as follows:

7.1 The $PM_{2.5}$ sampler shall be as specified in section 7 of appendix L to this part.

7.2 The PM_{10c} sampler shall be of like manufacturer, design, configuration, and fabrication to that of the $PM_{2.5}$ sampler and as specified in section 7 of appendix L to this part, except as follows:

7.2.1 The particle size separator specified in section 7.3.4 of appendix L to this part shall be eliminated and replaced by a downtube extension fabricated as specified in Figure O–1 of this appendix.

7.2.2 The sampler shall be identified as a PM_{10c} sampler on its identification label required under § 53.9(d) of this chapter.

7.2.3 The average temperature and average barometric pressure measured by the sampler during the sample period, as described in Table L–1 of appendix L to this part, need not be reported to EPA's AQS data base, as required by section 7.4.19 and Table L–1 of appendix L to this part, provided such measurements for the sample period determined by the associated $PM_{2.5}$ sampler are reported as required.

7.3 In addition to the operation/instruction manual required by section 7.4.18 of appendix L to this part for each sampler, supplemental operational instructions shall be provided for the simultaneous operation of the samplers as a pair to collect concurrent PM_{10c} and $PM_{2.5}$ samples. The supplemental instructions shall cover any special procedures or guidance for installation and setup of the samplers for $PM_{10-2.5}$ measurements, such as synchronization of the samplers' clocks or timers, proper programming for collection of concurrent samples, and any other pertinent issues related to the simultaneous, coordinated operation of the two samplers.

7.4 Capability for electrical interconnection of the samplers to simplify sample period programming and further ensure simultaneous operation is encouraged but not required. Any such capability for interconnection shall not supplant each sampler's capability to operate independently, as required by section 7 of appendix L of this part.

8.0 Filter Weighing

8.1 Conditioning and weighing for both PM_{10c} and $PM_{2.5}$ sample filters shall be as specified in section 8 of appendix L to this part. See reference 1 of section 13 of this appendix for additional, more detailed guidance.

8.2 Handling, conditioning, and weighing for both PM_{10c} and $PM_{2.5}$ sample filters shall be matched such that the corresponding PM_{10c} and $PM_{2.5}$ filters of each filter pair receive uniform treatment. The PM_{10c} and $PM_{2.5}$ sample filters should be weighed on the same balance, preferably in the same weighing session and by the same analyst.

8.3 Due care shall be exercised to accurately maintain the paired relationship of each set of concurrently collected $PM_{10}c$ and $PM_{2.5}$ sample filters and their net weight gain data and to avoid misidentification or reversal of the filter samples or weight data. See Reference 1 of section 13 of this appendix for additional guidance.

9.0 *Calibration.* Calibration of the flow rate, temperature measurement, and pressure measurement systems for both the PM_{10c} and $PM_{2.5}$ samplers shall be as specified in section 9 of appendix L to this part.

10.0 $PM_{10-2.5}$ Measurement Procedure

10.1 The PM_{10c} and $PM_{2.5}$ samplers shall be installed at the monitoring site such that their ambient air inlets differ in vertical height by not more than 0.2 meter, if possible, but in any case not more than 1 meter, and the vertical axes of their inlets are separated by at least 1 meter but not more than 4 meters, horizontally.

10.2 The measurement procedure for PM_{10c} shall be as specified in section 10 of appendix L to this part, with ''PM_{10c}'' substituted for ''$PM_{2.5}$'' wherever it occurs in that section.

10.3 The measurement procedure for $PM_{2.5}$ shall be as specified in section 10 of appendix L to this part.

10.4 For the $PM_{10-2.5}$ measurement, the PM_{10c} and $PM_{2.5}$ samplers shall be programmed to operate on the same schedule and such that the sample period start times are within 5 minutes and the sample duration times are within 5 minutes.

10.5 Retrieval, transport, and storage of each PM_{10c} and $PM_{2.5}$ sample pair following sample collection shall be matched to the extent practical such that both samples experience uniform conditions.

11.0 *Sampler Maintenance.* Both PM_{10c} and $PM_{2.5}$ samplers shall be maintained as described in section 11 of appendix L to this part.

12.0 Calculations

12.1 Both concurrent PM_{10c} and $PM_{2.5}$ measurements must be available, valid, and meet the conditions of section 10.4 of this appendix to determine the $PM_{10-2.5}$ mass concentration.

12.2 The PM_{10c} mass concentration is calculated using equation 1 of this section:

Equation 1

$$PM_{10c} = \frac{(W_f - W_i)}{V_a}$$

Where:

PM_{10c} = mass concentration of PM_{10c}, μg/m³;

W_f, W_i = final and initial masses (weights), respectively, of the filter used to collect the PM_{10c} particle sample, μg;

V_a = total air volume sampled by the PM_{10c} sampler in actual volume units measured at local conditions of temperature and pressure, as provided by the sampler, m³.

Note: Total sample time must be between 1,380 and 1,500 minutes (23 and 25 hrs) for a fully valid PM_{10c} sample; however, see also section 3.3 of this appendix.

12.3 The $PM_{2.5}$ mass concentration is calculated as specified in section 12 of appendix L to this part.

12.4 The $PM_{10-2.5}$ mass concentration, in $\mu g/m^3$, is calculated using Equation 2 of this section:

Equation 2

$$PM_{10-2.5} = PM_{10c} - PM_{2.5}$$

13.0 Reference

1. Quality Assurance Guidance Document 2.12. Monitoring $PM_{2.5}$ in Ambient Air Using Designated Reference or Class I Equivalent Methods. Draft, November 1998 (or later version or supplement, if available). Available at: *www.epa.gov/ttn/amtic/pgqa.html.*

14.0 Figures

Figure O–1 is included as part of this appendix O.

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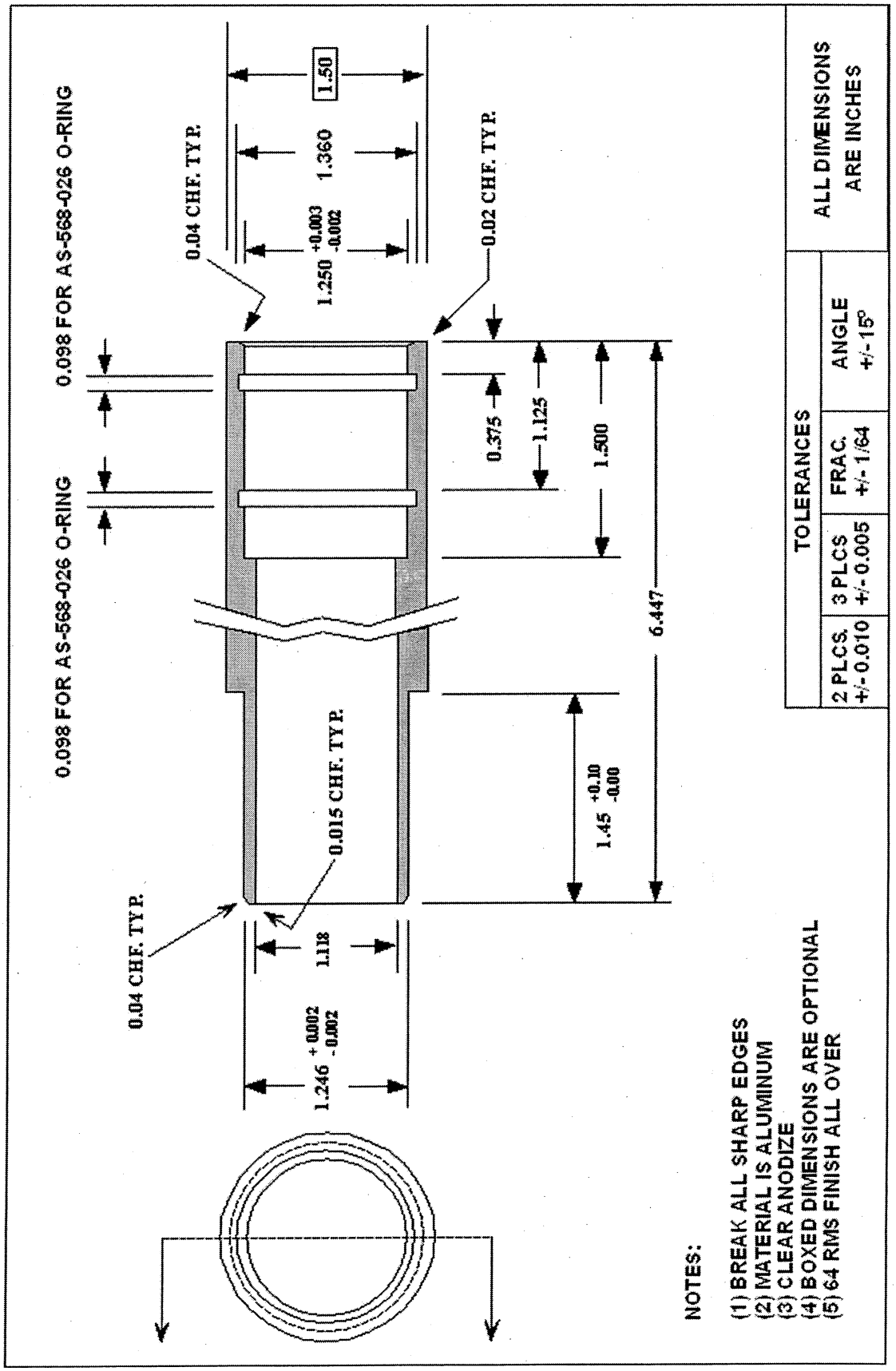
FIGURE O-1. DOWNTUBE EXTENSION



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Tuesday,
October 17, 2006

Part III

Environmental Protection Agency

40 CFR Parts 53 and 58

Revisions to Ambient Air Monitoring Regulations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 53 and 58

[EPA–HQ–OAR–2004–0018; FRL–8227–2]

RIN 2060–AJ25

Revisions to Ambient Air Monitoring Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is issuing final amendments to the ambient air monitoring requirements for criteria pollutants. The purpose of the amendments is to enhance ambient air quality monitoring to better serve current and future air quality management and research needs. The final amendments establish limited ambient air monitoring requirements for thoracic coarse particles in the size range of $PM_{10-2.5}$ to support continued research into these particles' distribution, sources, and health effects. The ambient air monitoring amendments also require each State to operate one to three monitoring stations that take an integrated, multipollutant approach to ambient air monitoring. In addition, the final amendments modify the general monitoring network design requirements for minimum numbers of ambient air monitors to focus on populated areas with air quality problems and to reduce significantly the requirements for criteria pollutant monitors that have measured ambient air concentrations well below the applicable National Ambient Air Quality Standards. These amendments also revise certain provisions regarding monitoring network descriptions and periodic assessments, quality assurance, and data certifications. A number of the amendments relate specifically to $PM_{2.5}$, revising the requirements for reference and equivalent method determinations (including specifications and test procedures) for fine particle monitors.

DATES: This final rule is effective on December 18, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0018. 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., confidential business information 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 are available either electronically in *http://www.regulations.gov* or in hard copy at the Revisions to the Ambient Air Monitoring Regulations Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations, and telephone numbers.

FOR FURTHER INFORMATION CONTACT: For general questions concerning the final amendments, please contact Mr. Lewis Weinstock, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–3661; fax number: (919) 541–1903; e-mail address: *weinstock.lewis@epa.gov*. For technical questions, please contact Mr. Tim Hanley, U.S. EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, Ambient Air Monitoring Group (C304–06), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–4417; fax number: (919) 541–1903; e-mail address: *hanley.tim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Categories and entities potentially regulated by this action include:

Category	NAICS code [1]	Examples of regulated entities
Industry	334513, 541380	Manufacturer, supplier, distributor, or vendor of ambient air monitoring instruments; analytical laboratories or other monitoring organizations that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53.
Federal government	924110	Federal agencies (that conduct ambient air monitoring similar to that conducted by States under 40 CFR part 58 and that wish EPA to use their monitoring data in the same manner as State data) or that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53.
State/territorial/local/tribal government	924110	State, territorial, and local, air quality management programs that are responsible for ambient air monitoring under 40 CFR part 58 or that elect to submit an application for a reference or equivalent method determination under 40 CFR part 53 or for an approved regional method approved under 40 CFR part 58 appendix C. The proposal also may affect Tribes that conduct ambient air monitoring similar to that conducted by States and that wish EPA to use their monitoring data in the same manner as State monitoring data.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility or Federal, State, local, or territorial agency is regulated by this action, you should carefully examine the requirements for reference or equivalent method determinations in 40 CFR part 53, subpart A (General

Provisions) and the applicability criteria in 40 CFR 51.1 of EPA's requirements for State implementation plans. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Where can I obtain a copy of this action?

In addition to being available in the docket, an electronic copy of this final action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final amendments will be placed on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

C. Public Comments on Proposed Amendments

EPA received approximately 20,000 public comments on the proposed amendments to the ambient air monitoring regulations during the 90-day comment period. These comments were submitted to the rulemaking docket and also during public hearings held in Chicago, Illinois; Philadelphia, Pennsylvania; and San Francisco, California (71 FR 8228, February 16, 2006). Public comments on the proposed amendments were submitted by States, local governments, Tribes, and related associations; energy, mining, ranching, and agricultural interests and related associations; vendors, laboratories, and technical consultants; health, environmental, and public interest organizations; and private citizens. The EPA has carefully considered these comments in developing the final amendments. Summaries of these comments and EPA's detailed responses are contained in the *Response to Comments* document included in the docket.

D. Judicial Review

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final amendments is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by December 18, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final amendments that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final amendments may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

E. Peer Review

The EPA sought expert scientific review of the proposed methods, technologies, and approach for ambient air monitoring by the Clean Air Scientific Advisory Committee (CASAC). The CASAC is a Federal advisory committee established to review scientific and technical information and make recommendations to the EPA Administrator on issues related to the air quality criteria and corresponding NAAQS. CASAC formed a National Ambient Air Monitoring Strategy (NAAMS) Subcommittee in 2003 to provide advice for a strategy for the national ambient air monitoring programs. This subcommittee, which operated over a 1-year period, and a new subcommittee on Ambient Air Monitoring and Methods (AAMM), formed in 2004, provided the input for CASAC on its consultations, advisories, and peer-reviewed recommendations to the EPA Administrator.

In July 2003, the CASAC NAAMS Subcommittee held a public meeting to review EPA's draft National Ambient Air Monitoring Strategy document (dated September 6, 2002), which contained technical information underlying planned changes to the ambient air monitoring networks. The EPA continued to consult with the CASAC AAMM Subcommittee throughout the development of the proposed amendments. Public meetings were held in July 2004, December 2004, and September 2005 to discuss the CASAC review of nearly 20 documents concerning methods and technology for measurement of particulate matter (PM); data quality objectives for PM monitoring networks and related performance-based standards for approval of equivalent continuous PM monitors; configuration of ambient air monitoring stations;[1] and other technical aspects of the proposed amendments. These documents, along with CASAC review comments and other information are available at: *http://www.epa.gov/ttn/amtic/casacinf.html*.

F. How is this document organized?

The information presented in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I obtain a copy of this action?
- C. Public Comments on Proposed Amendments
- D. Judicial Review
- E. Peer Review
- F. How is this document organized?

II. Authority

III. Overview
- A. Summary of Concurrent Final Action on Revisions to the National Ambient Air Quality Standards for Particulate Matter
- B. Summary of Changes to Ambient Air Monitoring Regulations
- C. Significant Dates for States, Local Governments, Tribes, and Other Stakeholders
- D. Implementation of the Revised Monitoring Requirements
- E. Federal Funding for Ambient Air Monitoring

IV. Discussion of Regulatory Revisions and Major Comments on Proposed Amendments to 40 CFR Part 53
- A. Overview of Part 53 Regulatory Requirements
- B. Requirements for Candidate Reference Methods for $PM_{10-2.5}$
- C. Requirements for Candidate Equivalent Methods $PM_{2.5}$ and $PM_{10-2.5}$
- D. Other Changes

V. Discussion of Regulatory Revisions and Major Comments on Proposed Amendments to 40 CFR Part 58
- A. Overview of Part 58 Regulatory Requirements
- B. General Monitoring Requirements
  - 1. Definitions and Terminology
  - 2. Annual Monitoring Network Plan and Periodic Network Assessment
  - 3. Operating Schedules
  - 4. Monitoring Network Completion for $PM_{10-2.5}$ and NCore Sites
  - 5. System Modifications
  - 6. Annual Air Monitoring Data Certification
  - 7. Data Submittal
  - 8. Special Purpose Monitors
  - 9. Special Considerations for Data Comparisons to the National Ambient Air Quality Standards
- C. Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations and Prevention of Significant Deterioration Air Monitoring
  - 1. General Quality Assurance Requirements
  - 2. Specific Requirements for $PM_{10-2.5}$, $PM_{2.5}$, PM_{10}, and Total Suspended Particulates
  - 3. Particulate Matter Performance Evaluation Program and National Performance Audit Programs
  - 4. Revisions to Precision and Bias Statistics
  - 5. Other Program Updates
- D. Appendix C—Ambient Air Quality Monitoring Methodology
  - 1. Applicability of Federal Reference Methods and Federal Equivalent Methods
  - 2. Approved Regional Methods for $PM_{2.5}$
- E. Appendix D—Network Design Criteria for Ambient Air Quality Monitoring
  - 1. Requirements for Operation of Multipollutant NCore Stations

[1] ''Station'' and ''site'' are used somewhat interchangeably in this notice of final rulemaking. When there is a difference (which will be apparent from context), ''site'' generally refers to the location of a monitor, while ''station'' refers to a suite of measurements at a particular site.

2. Requirements for Operation of $PM_{10-2.5}$ Stations
3. Requirements for Operation of $PM_{2.5}$ Stations
4. Requirements for Operation of PM_{10} Stations
5. Requirements for Operation of Carbon Monoxide, Sulfur Dioxide, Nitrogen Dioxide, and Lead Monitoring Sites
6. Requirements for Operation of Ozone Stations
7. Requirements for Operation of Photochemical Assessment Monitoring Stations
F. Appendix E—Probe and Monitoring Path Siting Criteria for Ambient Air Monitoring
1. Vertical Placement of $PM_{10-2.5}$ Samplers
2. Ozone Monitor Setback Requirement from Roads
G. Sample Retention Requirements
H. Deletion of Appendices B and F
VI. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
J. National Technology Transfer Advancement Act
K. Congressional Review Act

II. Authority

The EPA rules for ambient air monitoring are authorized under sections 110, 301(a), and 319 of the Clean Air Act (CAA). Section 110(a)(2)(B) of the CAA requires that each State implementation plan (SIP) provide for the establishment and operation of devices, methods, systems, and procedures needed to monitor, compile, and analyze data on ambient air quality and for the reporting of air quality data to EPA. Section 103 authorizes, among others, research and investigations relating to the causes, effects, extent, prevention and control of air pollution. Section 301(a) of the CAA authorizes EPA to develop regulations needed to carry out EPA's mission and establishes rulemaking requirements. Uniform criteria to be followed when measuring air quality and provisions for daily air pollution index reporting are required by CAA section 319.

III. Overview

A. Summary of Concurrent Final Action on Revisions to the National Ambient Air Quality Standards for Particulate Matter

Elsewhere in this **Federal Register**, EPA is finalizing revisions to the National Ambient Air Quality Standards (NAAQS) for particulate matter (PM). These revisions were proposed on January 17, 2006 (71 FR 2620). For a detailed explanation of these revisions, see that preamble elsewhere in this **Federal Register**.

The EPA is finalizing the $PM_{2.5}$ NAAQS revisions as proposed. With regard to the primary standards for fine particles (generally referring to particles less than or equal to 2.5 micrometers (μm) in diameter, $PM_{2.5}$), EPA is revising the level of the 24-hour $PM_{2.5}$ standard to 35 micrograms per cubic meter (μg/m^3), providing increased protection against health effects associated with short-term exposure (including premature mortality and increased hospital admissions and emergency room visits). The EPA is retaining the level of the annual $PM_{2.5}$ standard at 15 μg/m^3, continuing protection against health effects associated with long-term exposure (including premature mortality and development of chronic respiratory disease). The EPA is also finalizing the proposed revisions in the conditions under which spatial averaging of the annual primary $PM_{2.5}$ NAAQS is permitted, and placing these conditions in appendix N of 40 CFR part 50 rather than in appendix D of 40 CFR part 58.

With regard to secondary PM standards, EPA is revising the current 24-hour $PM_{2.5}$ secondary standard by making it identical to the revised 24-hour $PM_{2.5}$ primary standard, retaining the annual $PM_{2.5}$ and 24-hour PM_{10} secondary standards, and revoking the annual PM_{10} secondary standard. This suite of secondary PM standards is intended to provide protection against PM-related public welfare effects, including visibility impairment, effects on vegetation and ecosystems, and materials damage and soiling.

The EPA is finalizing the proposed Federal reference method (FRM) for $PM_{2.5}$. This action in essence codifies certain desirable features that have already been in widespread use as elements of approved equivalent methods or national user modifications.

The EPA is not finalizing the proposed NAAQS for $PM_{10-2.5}$, for reasons explained in the accompanying preamble to the revisions to the NAAQS. As a result, EPA is not finalizing a number of related provisions (notably those which would have prescribed which monitors could have been used for comparison with that proposed NAAQS) proposed as amendments to 40 CFR part 58. The EPA is, however, finalizing the proposed FRM for $PM_{10-2.5}$ (see appendix O to 40 CFR part 50). This FRM is based on paired filter-based samplers for $PM_{2.5}$ and PM_{10} and it will serve as the standard of reference for measurements of $PM_{10-2.5}$ concentrations in ambient air. This should provide a basis for approving Federal Equivalent Methods (FEMs) and promote the gathering of scientific data to support future reviews of the PM NAAQS. Because it is a filter based system, this method can itself be used to provide speciated data. The reference measurement from the $PM_{10-2.5}$ FRM is also important in the development of alternative $PM_{10-2.5}$ speciation samplers such as dichotomous samplers. The EPA will be issuing guidance to ensure the use of a consistent national approach for speciated coarse particle monitors as soon as possible.

In conjunction with the above NAAQS revisions and FRM provisions, as part of this final monitoring rule, as described below EPA is finalizing certain provisions which support collection of additional high quality data on ambient concentrations of $PM_{10-2.5}$. These data should be useful in improving the understanding of $PM_{10-2.5}$ air quality and in conducting future reviews of the PM NAAQS.

As explained in the preamble to the NAAQS revisions, EPA is revoking the annual NAAQS for particles generally less than or equal to 10 μm in diameter (PM_{10}). However, EPA is retaining the 24-hour PM_{10} NAAQS as a standard for short-term exposure to thoracic coarse particles, rather than revoking that standard in all but 15 areas as proposed. This change from the NAAQS revision proposal necessitates that the final monitoring rule restore certain PM_{10} monitoring provisions that were proposed for removal.

B. Summary of Changes to Ambient Air Monitoring Regulations

This rule, in most respects, finalizes the proposals put forth in the January 17, 2006, notice of proposed rulemaking (71 FR 2710). This final rule will facilitate monitoring program changes envisioned in the draft National Ambient Air Monitoring Strategy which was fully described in the proposal. These final changes, which apply to the monitoring program for all of the criteria pollutants, will reduce the required scale of monitoring for pollutants for which most areas have reached

attainment. The changes are intended to better focus monitoring resources on current air quality challenges. The changes will also allow States and local monitoring agencies more flexibility to design their monitoring programs to reflect local conditions.

In amendments to 40 CFR part 53 (Reference and Equivalent Methods), this final rule incorporates the proposed criteria for approval of Federal equivalent methods (FEM) for $PM_{2.5}$, with some modifications to the method testing requirements and approval criteria in response to persuasive public comments. The modifications will require a more robust set of testing conditions and closer performance matching of candidate FEMs to FRMs. The EPA is also finalizing the rule with some strengthening revisions to the proposed criteria for approved regional methods (ARMs) for $PM_{2.5}$. The new criteria for $PM_{2.5}$ FEMs and ARMs will facilitate the commercialization and EPA approval of continuous $PM_{2.5}$ mass monitors, allowing them to be substituted for many of the currently operating filter-based FRMs, which will support additional monitoring objectives and reduce annual monitoring costs.

In other amendments to 40 CFR part 53, EPA is adopting FEM approval criteria for $PM_{10-2.5}$, with some revisions from the proposal that will provide for approval and use of methods that can meet multiple monitoring objectives. The new FEM performance criteria for $PM_{10-2.5}$ will facilitate approval of filter-based methods for direct sampling of $PM_{10-2.5}$ concentrations that can be chemically speciated using post-sampling laboratory analysis. The FEM criteria are also expected to encourage commercialization of highly time-resolved continuous methods. The EPA is hopeful that the $PM_{2.5}$ and $PM_{10-2.5}$ FEM criteria together will result in the approval and commercialization of methods that provide equivalent measurements of $PM_{2.5}$, PM_{10}, and $PM_{10-2.5}$ from a single instrument.

In amendments to 40 CFR part 58 (Ambient Air Quality Surveillance), this final rule, as proposed, requires States to establish and operate a network of NCore multipollutant monitoring stations. The EPA intends the NCore network to consist of approximately 75 stations, of which the rule requires between 62 and 71 such stations. These stations must be operational by 2011. Most States, as well as the District of Columbia, Puerto Rico, and the Virgin Islands, will be required to operate a single station. California, Florida, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas will be required to operate two or three NCore stations. For these States, the selection between two or three stations will be part of the development and approval of the NCore monitoring plan that is due by July 1, 2009. The EPA also plans to negotiate with a number of States, local agencies, and/or Tribes to operate additional NCore stations on a voluntary basis, bringing the total number of stations to about 75. By approving some required stations to be in rural areas and by negotiating for additional voluntary sites in rural areas, EPA expects that about 55 NCore sites will be in urbanized areas and about 20 in rural areas. The rural sites are intended to be sited away from any large local emission sources, so that they represent ambient concentrations over an extensive area. The NCore stations must perform the types of pollutant measurements that were proposed, with three exceptions. $PM_{10-2.5}$ measurements may be made on a 1-in-3 day schedule rather than the proposed every day schedule, NO_y [2] measurements may be waived by the EPA Administrator based on certain criteria, and as explained later in this section, $PM_{10-2.5}$ chemical speciation will be required in addition to $PM_{10-2.5}$ mass concentration measurements.

The EPA estimated that the proposed rule would have required States to operate about 225 $PM_{10-2.5}$ monitors based on the population and estimated $PM_{10-2.5}$ concentrations of metropolitan statistical areas (MSAs) with populations of 100,000 or more. In addition, $PM_{10-2.5}$ monitors were proposed to be required at NCore stations; some monitors likely would have satisfied both of these requirements. Because EPA is not adopting a NAAQS for $PM_{10-2.5}$, the final monitoring rule does not include the proposed requirement for the broad network of $PM_{10-2.5}$ monitoring stations in MSAs over 100,000 population. However, the final monitoring rule does require $PM_{10-2.5}$ monitors at the required NCore multipollutant monitoring stations. The data gathered from these stations should be useful in improving understanding of $PM_{10-2.5}$ air quality and in conducting future reviews of the PM NAAQS. The EPA anticipates that due to natural variations among the cities and rural areas where the NCore stations will be sited, the NCore $PM_{10-2.5}$ monitors will represent a range of concentrations and nearby emission source types, and that many but not all will be in well populated locations.

The EPA is not adopting the proposed population-based and population density-based siting requirements for $PM_{10-2.5}$ monitors, or any part of the proposed five-part suitability test for $PM_{10-2.5}$ monitoring sites, which as proposed would have controlled whether $PM_{10-2.5}$ data from a monitoring site could be compared to the proposed $PM_{10-2.5}$ NAAQS. These proposed requirements were tied to the establishment of a $PM_{10-2.5}$ NAAQS with a qualified $PM_{10-2.5}$ indicator based on a determination of whether ambient mixes of coarse particles are or are not dominated by coarse particle emissions from enumerated types of sources. Since EPA is not adopting this part of the proposal, these issues are now moot. In the absence of a $PM_{10-2.5}$ NAAQS, our goal nevertheless will be to locate $PM_{10-2.5}$ monitors in a manner that satisfies an objective of the proposed rule, which was to focus most monitoring resources on population centers.

This final rule contains a requirement for $PM_{10-2.5}$ speciation to be conducted at NCore multipollutant monitoring stations. The EPA had proposed a requirement for $PM_{10-2.5}$ speciation in 25 areas, with the areas required to have this monitoring selected based on having a Metropolitan Statistical Area (MSA) population over 500,000 and having an estimated design value of greater than 80 percent of the proposed $PM_{10-2.5}$ NAAQS. This would have concentrated the $PM_{10-2.5}$ speciation monitoring in areas that have high populations and high exposures to $PM_{10-2.5}$. Since EPA is requiring $PM_{10-2.5}$ monitoring at NCore primarily for scientific purposes, it is more appropriate to have monitoring in a variety of urban and rural locations to increase the diversity of areas for which chemical species data will be available to use in scientific studies. The EPA had already proposed to require chemical speciation for $PM_{2.5}$ at NCore stations. The collocation of both $PM_{10-2.5}$ and $PM_{2.5}$ speciation monitoring at NCore stations is consistent with the multipollutant objectives of the NCore network and will support further research in understanding the chemical composition and sources of PM_{10}, $PM_{10-2.5}$, and $PM_{2.5}$ at a variety of urban and rural locations. The EPA will work with States to ensure that $PM_{10-2.5}$ speciation monitors employ the latest in speciation technology to advance the science so that future regulation will provide more targeted protection against the effects only of those coarse particles

[2] NO_y refers to a broad class of nitrogen-containing reactive compounds in ambient air, explained in more detail in sections V.E.1 and V.E.7 of this preamble.

and related source emissions that prove to be of concern to public health.

Because the 24-hour PM_{10} NAAQS is being retained in all parts of the country, this final rule retains the existing minimum monitoring network design requirements for PM_{10}. These longstanding requirements are based on the population of a MSA and its historical PM_{10} air quality. For any given combination of these two parameters, a range of required monitors is prescribed, with the required number to be determined as part of the annual monitoring plan. The EPA estimates that once States and Regional Administrators have considered how current population data and recent PM_{10} air quality affect the required number of PM_{10} monitors in each area, between 200 and 500 FRM/FEM monitors will be required, compared to about 1,200 in operation now. While States may of course choose to continue to operate monitors in excess of the minimum requirements, EPA notes that many PM_{10} monitors have been recording concentrations well below the PM_{10} NAAQS and are candidates for discontinuation at a State's initiative. States may choose to retain PM_{10} monitors that are recording concentrations below the PM_{10} NAAQS level to support monitoring objectives other than attainment/nonattainment determinations, such as baseline monitoring for prevention of significant deterioration permitting or public information.

This final rule changes the requirements for the minimum number of monitors for $PM_{2.5}$ and ozone (O_3) monitoring networks. In response to comments, the final requirements require more O_3 and $PM_{2.5}$ monitoring in more polluted areas and more monitors in CSAs than was proposed. While this final rule requires fewer monitors than are now operating for O_3 and $PM_{2.5}$, as did the pre-existing monitoring rule, EPA does not intend to encourage net reductions in the number of O_3 and $PM_{2.5}$ monitoring sites in the U.S. as a whole. The surplus in the existing networks relative to minimum requirements gives States more flexibility to choose where to apply monitoring resources for O_3 and $PM_{2.5}$. For $PM_{2.5}$, this final rule requires that sampling be conducted on a daily basis for monitors that have recently been recording the highest concentrations in their area and have been recording concentrations very near the 24-hour NAAQS, to avoid a bias in attainment/nonattainment designations that can occur with less frequent sampling. Pursuant to this provision, EPA estimates that about 50 sites now sampling less frequently will be required to change to daily sampling.

As proposed, minimum monitoring requirements for carbon monoxide (CO), sulfur dioxide (SO_2), and nitrogen dioxide (NO_2) are eliminated in this final rule. Minimum requirements for lead (Pb) monitoring stations and Photochemical Assessment Monitoring Stations (PAMS) are reduced to those that were proposed. For all five criteria pollutants, however, existing monitoring sites (except those already designated as special purpose monitors) cannot be discontinued without EPA Administrator (for PAMS or NCore stations) or Regional Administrator (for all other types of monitoring) approval. Regional Administrator approval is also required for discontinuation of O_3, $PM_{2.5}$, and PM_{10} sites even if they are in excess of minimum network design requirements. While the rule requires EPA approval, such approvals should be facilitated where appropriate by rule provisions which clearly establish certain criteria under which discontinuation will be approved. These criteria are the same as those proposed with four minor changes explained in detail in section V.B.5, System Modifications. These criteria are not exclusive, and monitors not meeting any of the listed criteria may still be approved for discontinuation on a case-by-case basis if discontinuation does not compromise data collection needed for implementation of a NAAQS. Specific monitoring for these pollutants may currently be required in individual SIPs; this monitoring rule does not affect any SIP requirements for such specific monitoring.

Appendix A to this final rule includes most of the proposed revisions to the quality system for ambient air monitoring. In particular, the proposed requirement for States to ensure a program of adequate and independent audits of their monitoring stations is included in this final rule. One way, but not the only way, a State can satisfy this requirement is to agree that EPA will conduct these audits using funds that otherwise would have been awarded to the State as part of its annual air quality management grant. A small number of changes to the proposed quality system requirements reflect public comments on details of the proposed revisions. Also, because the objective of $PM_{10-2.5}$ monitoring is to better understand $PM_{10-2.5}$ air quality and to support health effects studies, rather than to provide data for use in nonattainment designations, and because there consequently will be a much smaller network of required $PM_{10-2.5}$ monitors than proposed, the quality system for $PM_{10-2.5}$ in this final rule differs from the proposed system in that it aims to quantify data quality at the national level of aggregation rather than at the level of individual monitoring organizations as had been proposed. Another change from the proposal is that a provision has been added allowing the EPA Regional Administrator to waive the usual quality system requirements for special purpose monitors when those requirements are logistically infeasible due to unusual site conditions and are not essential to the monitoring objectives.

The EPA is finalizing the proposed provisions regarding when data from special purpose monitors (SPMs) can be compared to a NAAQS, with minor clarifications. In summary, the final rule provides that if an ozone or $PM_{2.5}$ SPM operates for only two years or less, EPA will not use data from that monitor to make attainment/nonattainment determinations. This limitation is inherent in the form of these NAAQS, which require three years of data for a determination to be made. For the other NAAQS pollutants, as a policy matter, EPA will not use only two years of data from a SPM to voluntarily redesignate an area to nonattainment. This limitation is possible because as established in Section 107(d)(1) of the Act, the only time EPA is obligated to redesignate areas as attainment or nonattainment is after it promulgates or revises a NAAQS. Under an existing standard, voluntary redesignations are at the Administrator's discretion: EPA has no legal obligation to redesignate an area even if a monitor should register a violation of that standard (see CAA Section 107(d)(3)). In particular, in the case of $PM_{10,}$ EPA stated in section VII.B of the preamble to the NAAQS rule (printed in today's **Federal Register**) that because EPA is retaining the current 24-hour PM_{10} standards, new nonattainment designations for PM_{10} will not be required under the provisions of the Clean Air Act. The same is true for CO, NO_2, SO_2, and Pb. However, all valid data from a SPM will be considered in determining if a previously designated nonattainment area has subsequently attained the NAAQS. See also section V.B.8 below.

This final rule advances, to May 1, the date each year by which monitoring organizations must certify that their submitted data is accurate to the best of their knowledge. However, this requirement will take effect one year later than proposed, in 2010 for data collected in 2009.

This final rule retains the current requirement for an annual monitoring plan and finalizes most of the new

substantive and procedural requirements that were proposed for these plans. One change is that some required new elements proposed for the annual plan have instead been shifted to the 5-year network assessment, to reduce the annual plan preparation burden and to allow these elements to be prepared more carefully. The first 5-year network assessment has been postponed by one year, to July 1, 2010.

The proposed requirements regarding probe heights for $PM_{10-2.5}$ monitors, increased O_3 monitor distance from roadways (for newly established O_3 stations), data elements to be reported, and PM filter retention are included in this final rule.

This final rule also removes and reserves the pre-existing appendix B, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, and appendix F, Annual SLAMS Air Quality Information, of 40 CFR part 58 because they are no longer needed.

C. Significant Dates for States, Local Governments, Tribes, and Other Stakeholders

Only State governments, and those local governments that have been assigned responsibility for ambient air monitoring by their States, are subject to the mandatory requirements of 40 CFR part 58.[3] The following summary of applicable requirements is presented in chronological order, as an aid for States in planning their activities to comply with the rule. States are required to comply with pre-existing requirements in 40 CFR part 58, until the compliance date for each new requirement is reached.

The following provisions in 40 CFR part 53 and part 58 are effective on December 18, 2006:

- The criteria and process for EPA Administrator approval of FRMs, FEMs, and ARMs or where applicable Regional Administrator approval of ARMs. Manufacturers of continuous $PM_{2.5}$ and $PM_{10-2.5}$ instruments may apply for designation of their instruments as FRMs or FEMs starting today. The EPA is eager to receive such applications as soon as manufacturers can collect and analyze the necessary supporting data. State, local, and Tribal monitoring agencies may seek approval of their $PM_{2.5}$ continuous monitor as ARMs beginning today, either independently or in cooperation with instrument manufactures.
- The revised quality system requirements, except that full quality assurance practices, if not waived, are not required until January 1, 2009 for SPMs which use FRM, FEM, or ARM monitors.
- The new minimum requirements (or absence of minimum requirements) for the number of monitors for specific NAAQS pollutants and for PAMS stations, if the new minimum allows a State to discontinue a previously required monitor. See below for the compliance date of the new minimum requirements in situations in which the final requirement is greater than the currently operating network.
- The criteria for EPA Regional Administrator approval for removal of monitors that are in excess of minimum required, if a State seeks such removal.
- The criteria for use of data from SPMs in determinations of attainment/nonattainment.
- The elimination of the requirement for reporting of certain $PM_{2.5}$ monitor operating parameters.
- The revised requirement for separation between roadways and O_3 monitors, for new O_3 monitors whose placement has not already been approved as of December 18, 2006.
- The new specification for probe heights for $PM_{10-2.5}$ monitors.

The new requirement to archive all PM_{10c} and $PM_{10-2.5}$ filters for 1 year begins with filters collected on or after January 1, 2007. However, EPA expects few if any monitoring agencies to be operating PM_{10c} or $PM_{10-2.5}$ filters this early, so most will be affected later.[4]

The requirement to submit mass data on blank $PM_{2.5}$ filters begins on January 1, 2007.

The required date to begin daily $PM_{2.5}$ sampling at certain $PM_{2.5}$ monitoring sites is January 1, 2007. The EPA believes this will affect about 50 $PM_{2.5}$ monitoring sites. The EPA will notify the affected States directly.

This final rule does not change the schedule for reporting ambient air quality data to the Administrator, via the Air Quality System (AQS). However the rule now explicitly requires that associated quality assurance data be submitted along with ambient concentration data. The first submission affected will be the one due on June 30, 2007 for data collected in January through March of 2007.

As presently is the case, States must submit an annual network plan by July 1 of each year. The next plan is due July 1, 2007.

States whose $PM_{2.5}$, PM_{10}, or O_3 networks do not meet the revised requirements of this final rule regarding the number of monitors in a given MSA or CSA are required to submit a plan for adding the necessary additional monitors by July 1, 2007 and to begin operating the new monitors by January 1, 2008. The EPA believes that this will only affect O_3 and $PM_{2.5}$ monitoring in fewer than ten locations each. The EPA will notify these States directly.

A plan for the implementation of the required NCore multipollutant monitoring stations, including site selection, is due by July 1, 2009. States must implement the required NCore multipollutant stations by January 1, 2011, including $PM_{10-2.5}$ monitoring.

States will be required to submit earlier certification letters regarding the completeness and accuracy of the ambient concentration and quality assurance data they have submitted to the Air Quality System (AQS) operated by EPA, starting May 1, 2010 for data collected during 2009. Until then, States are required to submit these letters by July 1 of each year.

Network assessments are required from States every 5 years starting July 1, 2010.

Under the Tribal Authority Rule (TAR) (40 CFR part 49), which implements section 301(d) of the CAA, Tribes may elect to be treated in the same manner as a State in implementing sections of the CAA. However, EPA determined in the TAR that it was inappropriate to treat Tribes in a manner similar to a State with regard to specific plan submittal and implementation deadlines for NAAQS-related requirements, including, but not limited to, such deadlines in CAA sections 110(a)(1), 172(a)(2), 182, 187, and 191. See 40 CFR 49.4(a). For example, an Indian Tribe may choose, but is not required, to submit implementation plans for NAAQS-related requirements, nor is any Tribe required to monitor ambient air. If a Tribe elects to do an implementation plan, the plan can contain program elements to address specific air quality problems in a partial program. The EPA

[3] Throughout this preamble, ''States'' is meant to also refer to local governments that have been assigned responsibility for ambient air monitoring within their respective jurisdiction by their States. This preamble also uses ''monitoring organization'' to refer to States, local agencies, and/or Tribes conducting monitoring under or guided by the provisions of 40 CFR part 58. This final rule applies the same requirements to the District of Columbia, Puerto Rico, and the Virgin Islands as apply to the 50 States. Other U.S. territories are not subject to this final rule.

[4] As explained in section IV.B of this preamble, the term ''PM_{10c}'' refers to a PM_{10} Federal reference method (FRM) that is designated as a PM_{10c} FRM under the final NAAQS rule appearing elsewhere in today's **Federal Register.** In essence, it would be a $PM_{2.5}$ FRM with the inertial fractionator used to separate out particles larger than 2.5 microns removed so that all PM_{10} is collected. Unlike other PM_{10} instruments, a PM_{10c} instrument must control flow to a specified flow rate of 16.67 liters/minute at local conditions of temperature and pressure. A $PM_{10-2.5}$ FRM consists of a $PM_{2.5}$ FRM and a PM_{10c} FRM of the same model. See also 71 FR 2720.

will work with the Tribe to develop an appropriate schedule for making any appropriate monitoring system changes which meet the needs of each Tribe.

Indian Tribes have the same rights and responsibilities as States under the CAA to implement elements of air quality programs as they deem necessary. Tribes can choose to engage in ambient air monitoring activities. In many cases, Indian Tribes will be required by EPA regions to institute quality assurance programs that comply with 40 CFR part 58 appendix A, utilize FRM, FEM, or ARM monitors when comparing their data to the NAAQS, and to insure that the data collected is representative of their respective airsheds. For FRM, FEM, or ARM monitors used for NAAQS attainment or nonattainment determinations, quality assurance requirements of 40 CFR part 58 must be followed and would be viewed by EPA as an indivisible element of a regulatory air quality monitoring program.

D. Implementation of the Revised Monitoring Requirements

After promulgation, EPA will assist States in implementing the amended requirements using several mechanisms. The EPA will work with each State to develop approvable monitoring plans for its new NCore multipollutant monitoring stations, including $PM_{10-2.5}$ monitoring. For example, EPA will negotiate the selection of required new monitoring sites (or new capabilities at existing sites) and their schedules for start up as well as plans to discontinue sites that are no longer needed. The EPA will negotiate with each State its annual grant for air quality management activities, including ambient monitoring work. Once States have established a new monitoring infrastructure to meet the new requirements, EPA will review State monitoring activities, submitted data, and plans for further changes on an annual basis.

The EPA's support for and participation in enhancing the national ambient air monitoring system to serve current and future air quality management and research needs will extend beyond ensuring that States meet the minimum requirements of this final monitoring rule. The EPA will work with each State or local air monitoring agency to determine what affordable monitoring activities above minimum requirements would best meet the diverse needs of the individual air quality management program as well as the needs of other data users. The EPA may also work with the States, and possibly with some Tribes, to establish and operate $PM_{10-2.5}$ speciation sites inaddition to those required by this final rule. The EPA also plans to work with the States, and possibly with some Tribes, to establish and operate sites that will measure only $PM_{10-2.5}$ concentrations in rural and less urbanized locations, in addition to the $PM_{10-2.5}$ monitors required at NCore sites.

An important element of implementing the new requirements will be EPA's role in encouraging the development and application of FEMs, and the development of a sampler or samplers that can provide a direct measurement of $PM_{10-2.5}$ for collection of filters used in chemical speciation and for continuous methods that measure both $PM_{2.5}$ and $PM_{10-2.5}$. The EPA has determined that continuous monitoring of $PM_{2.5}$ has many advantages over the filter-based FRM. This final rule makes it more practical for manufacturers and users of continuous $PM_{2.5}$ instruments to obtain designation for them as FEMs or ARMs. To ensure objectivity and a sound scientific basis for decisions, EPA's Office of Research and Development will review applications for FEM and ARM designations based on the criteria in this final rule and will recommend approval or disapproval to the Administrator. For agencies seeking use of an ARM already approved in another monitoring network, the applicable Regional Office will conduct a review, most often as part of the EPA approval of an annual monitoring plan, based on the criteria in this final monitoring rule.

The EPA will also provide technical guidance documents and training opportunities for State, local, and Tribal monitoring staff to help them select, operate, and use the data from new types of monitoring equipment. The EPA has already distributed a technical assistance document on the precursor gas monitors [5] that will be part of the NCore multipollutant sites and EPA has conducted multiple training workshops on these monitors. Additional guidance will be developed and provided on some other types of monitors with which many State monitoring staff are currently unfamiliar, and on network design, site selection, discontinuation of sites, quality assurance, network assessment, and other topics. While Tribes are not subject to the monitoring requirements of this final rule, these technical resources will also be available to them directly from EPA and via grantees, such as the Institute for Tribal Environmental Professionals and the Tribal Air Monitoring Support Center.

The EPA will also continue to support the National Park Service's operation of the IMPROVE monitoring network, which provides important data for implementing both regional haze and $PM_{2.5}$ attainment programs.[6] The number of sites in the IMPROVE program may vary, depending on EPA's enacted budget and the data needs of the regional haze and $PM_{2.5}$ attainment programs.

The EPA will also continue to operate the Clean Air Status and Trends Network (CASTNET), which monitors for O_3, PM, and chemical components of PM in rural areas across the nation.[7] EPA is in the process of revising CASTNET to upgrade its monitoring capabilities to allow it to provide even more useful data to multiple data users. The EPA expects that about 20 CASTNET sites will have new capabilities similar to some of the capabilities required at NCore multipollutant sites.

This final rule includes a requirement that States must ensure a program of adequate and independent audits of their monitoring stations. One way, but not the only way, a State can satisfy this requirement is to agree that EPA will conduct these audits using funds that otherwise would have been awarded to the State as part of its annual air quality management grant. In anticipation of the possible inclusion of this requirement in this final rule, EPA has been working with monitoring organizations to determine which of these organizations prefer this approach. The EPA expects that, for 2007, nearly all monitoring organizations will request that EPA conduct these audits. For those that chose another acceptable approach, EPA will conduct limited cross-checks of equipment, calibration standards, auditor preparation, and audit procedures to ensure that their audit programs are adequate.

The EPA recognizes that characterizing and managing some air quality problems requires ambient concentration and deposition data that cannot be provided by the types of monitoring required by the monitoring activities addressed in today's final rule. These problems include near-roadway exposures to emissions from motor

[5] Technical Assistance Document (TAD) for Precursor Gas Measurments in the NCore Multipollutant Monitoring Network. Version 4. U.S. Environmental Protection Agency. EPA–454/R–05–003. September 2005. Available at: *http://www.epa.gov/ttn/amtic/pretecdoc.html.*

[6] Additional information on EPA/National Park Service IMPROVE (Interagency Monitoring of Protected Visual Environments) Visibility Program is available at: *http://www.epa.gov/ttn/amtic/visdata.html.*

[7] Additional information on CASTNET is available at: *http://www.epa.gov/castnet/.*

vehicles and mercury deposition. The EPA is actively researching these issues and developing concepts for monitoring programs to address them, but these issues are outside the scope of this final rule.

The Air Quality System (AQS) is the data system EPA uses to receive ambient air monitoring data from State, local, Tribal, and other types of monitoring organizations and to make those data available to all interested users. AQS is based on a particular data structure and uses particular data input formats including data elements and defined values for categorical data. The existing AQS data structure and input formats are for the most part consistent with a number of changes made in this final rule to pre-existing terminology and requirements, but some changes will be needed in AQS to re-establish full consistency with requirements in the monitoring rule. The changes to AQS will likely, in turn, require some modifications to data preparation tools and practices at monitoring agencies. The EPA will prepare and implement a plan for making these changes, and will advise AQS users of the ramifications while doing so. Generally, the compliance deadlines in the rule are such that monitoring agencies are not required to immediately comply with any changes in rule provisions that would affect data transfer formats and procedures. Monitoring agencies, for the present, should continue to follow pre-existing AQS formats and procedures until notified.

E. Federal Funding for Ambient Air Monitoring

EPA has historically funded part of the cost to State, local, and Tribal governments of installation and operation of monitors to meet Federal monitoring requirements. Sections 105 and 103 of the CAA allow EPA to provide grant funding for programs for preventing and controlling air pollution and for some research and development efforts respectively. Eligible entities must apply for section 103 grants. Eligible entities must provide nonfederal matching funds for section 105 grants. The EPA's enacted budget specifies overall how much State and Tribal Air Grant (STAG) funding is available for these grants.

In recent years, EPA has received special authority through appropriations acts to use section 103 grant funding for establishing and operating $PM_{2.5}$-related monitoring stations. Funding for other types of monitoring has been included in the grants awarded under section 105. Grants to Tribes for air quality management work, including ambient monitoring, have been awarded under section 103 with the overall amount for these funds established by the enacted budget.

During the public comment period for this rulemaking EPA received a large number of comments addressing funding issues. Most of these comments expressed opposition to the Administration's proposed EPA budget for fiscal year 2007, which included a proposal to provide $PM_{2.5}$ monitoring support through section 105 grant funding, as is done for all other criteria pollutants. (As of today, the Congress has not enacted a 2007 budget for EPA.) Commenters stated that if funding for monitoring were reduced as proposed, State and local agencies would have less flexibility than desired in designing and operating their monitoring programs, and that the proposed requirements for new $PM_{10-2.5}$ and NCore networks and for adequate and independent audits of monitoring stations would be burdensome. Some commenters requested that the proposed new requirements not be included in this final rule for this reason.

The EPA understands these concerns. However, the CAA requirements from which this final rule derives [8] are not contingent on EPA providing funding to States to assist in meeting those requirements. Accordingly, the comments regarding funding are not directly relevant to the content of this final rule. Nevertheless, EPA recognizes that resources always have been and will remain a practical consideration for establishing and operating monitoring programs. The EPA will continue to work with States in this regard, in particular as EPA determines how to allocate enacted funding among States and among types of monitoring so as to achieve the best possible environmental outcomes. Several provisions of this final rule reduce minimum requirements, which will provide flexibility for States to reduce some of their pre-existing costs.

[8] Section 103(c)(2) of the Clean Air Act [42 U.S.C.A. 7403(c)] provides that the Administrator shall conduct a program for sampling air pollution that includes the establishment of a national network to monitor air quality and to ensure the comparability of air quality data collected in different states. Section 110(a)(2)(B) [42 U.S.C.A 7410(a)] provides that each State implementation plan shall provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to monitor, compile, and analyze data on ambient air quality and upon request make such data available to the Administrator. Section 182(c)(1) [42 U.S.C.A. 7511a(c)(1)] states that the Administrator will promulgate rules for enhanced monitoring for ozone, oxides of nitrogen, and volatile organic compounds in serious ozone areas.

Several commenters stated that EPA should not use STAG funds for the improvement or operation of Federal monitoring networks such as CASTNET. The EPA does not intend to use STAG funds from fiscal year 2007 or beyond in this way.

IV. Discussion of Regulatory Revisions and Major Comments on Proposed Amendments to 40 CFR Part 53

A. Overview of Part 53 Regulatory Requirements

Various appendices to 40 CFR part 50 define certain ambient air monitoring methods as Federal reference methods which may be used to determine attainment of the National Ambient Air Quality Standards (NAAQS), and which form the benchmark for determining equivalency of other methods which may also be used to determine attainment. Under 40 CFR part 53, EPA designates specific commercial instruments or other versions of methods as Federal reference methods (FRMs). To be so designated, a particular FRM must be shown, according to the procedures and requirements of part 53, to meet all specifications of both the applicable appendix of part 50 as well as applicable specifications and requirements of part 53.

To foster development of improved alternative air monitoring methods, EPA also designates—as Federal equivalent methods (FEMs)—alternative methods that are shown to have measurement performance comparable to the corresponding FRM. Part 53 contains explicit performance tests, performance standards, and other requirements for designation of both FRMs and FEMs for each of the criteria pollutants. In addition, States' air surveillance monitoring networks are required, under 40 CFR part 58, appendix C, to use only EPA-designated FRMs, FEMs, or ARMs at SLAMS sites. A list of all methods that EPA has designated as either FRMs or FEMs for all criteria pollutants is available at *http://www.epa.gov/ttn/amtic/criteria.html.*

Elsewhere in today's **Federal Register**, EPA is promulgating a new Federal reference method for measurement of mass concentrations of thoracic coarse particles ($PM_{10-2.5}$) in the atmosphere, to be codified as appendix O to 40 CFR part 50. Although, as explained earlier, EPA is not at this time adopting any NAAQS for $PM_{10-2.5}$, EPA believes an FRM for $PM_{10-2.5}$ is still highly desirable to aid in a variety of needed

research studies.[9] This new FRM is defined as the standard of reference for measurement of $PM_{10-2.5}$ concentrations in ambient air. It will be an acceptable and readily available $PM_{10-2.5}$ measurement method for new NCore multipollutant monitoring sites to be located at approximately 75 urban and rural locations. Availability of an approved FRM for $PM_{10-2.5}$ will also help provide consistency among $PM_{10-2.5}$ measurements used in future health studies of the adverse health effects associated with exposure to thoracic coarse particles. Lastly, the $PM_{10-2.5}$ reference method will provide the basis for development of speciation samplers capable of providing an improved understanding of the compositions of different ambient mixes of thoracic coarse particles, so that this composition can be related to both health effects and to particle sources. Associated with this new reference method, EPA is also establishing related amendments to 40 CFR part 53 to extend the designation provisions of FRMs and FEMs to methods for $PM_{10-2.5}$. These amendments set forth explicit tests, performance standards, and other requirements for designation of specific commercial samplers, sampler configurations, or analyzers as either FRMs or FEMs for $PM_{10-2.5}$, as appropriate.

As noted in section VI.A of the preamble to the NAAQS revisions published elsewhere in this **Federal Register**, EPA recognizes that the FRM, while providing a good standard of performance for comparison to other methods, is not itself optimal for routine use in $PM_{10-2.5}$ monitoring networks. Alternative methods are needed that provide a more direct measurement of ambient $PM_{10-2.5}$ concentrations. Methods are also needed that collect samples of $PM_{10-2.5}$ that are more physically separated for analysis of chemical species. Also, automated, continuous-type methods provide many operational advantages to ease monitoring burdens, reduce on-site service requirements, and eliminate off-site sample filter support services, as well as to provide measurement resolution of 1 hour or less and near real-time reporting of monitoring data. Therefore, EPA is interested in encouraging the development of alternative monitoring methods for $PM_{10-2.5}$ by focusing on the explicit test and qualification requirements necessary for designation of such types of methods as FEMs for $PM_{10-2.5}$. In fact, EPA anticipates that alternative FEMs will eventually provide most of the $PM_{10-2.5}$ monitoring data obtained in the States' monitoring networks.

Further, EPA recognizes that the potential benefits of automated/continuous monitoring methods apply as well to FEMs for $PM_{2.5}$. Accordingly, as proposed, EPA is also establishing new requirements in part 53 for designation of continuous FEMs for $PM_{2.5}$. See 71 FR 2721. The $PM_{2.5}$ and $PM_{10-2.5}$ FEM provisions parallel each other in many respects so inclusion now is both appropriate and conforming.

The new requirements for approval of automated/continuous FEMs can accommodate a wide range of potential $PM_{10-2.5}$ or $PM_{2.5}$ continuous measurement technologies. Ambient air testing of a candidate technology at diverse monitoring sites is required in order to demonstrate that the level of comparability to collocated Federal reference method measurements is adequate to meet established data quality objectives (DQOs).

This final rule also modifies somewhat certain existing requirements for designation of alternative, non-continuous methods for $PM_{2.5}$. As explained in section IV.B of this preamble, the modified requirements will be fully consistent with the more advanced new requirements for both continuous and non-continuous FEMs for $PM_{10-2.5}$.

B. Requirements for Candidate Reference Methods for $PM_{10-2.5}$

No comments were received related specifically to the $PM_{10-2.5}$ FRM designation requirements. These provisions are adopted as proposed. Because of the nearly complete similarity between the specifications for the new $PM_{10-2.5}$ reference method and for the existing $PM_{2.5}$ reference method, the designation requirements for $PM_{10-2.5}$ reference methods are essentially the same as those for $PM_{2.5}$ reference methods. As set forth in the new appendix O to 40 CFR part 50, the $PM_{10-2.5}$ reference method specifies a pair of samplers consisting of a conventional $PM_{2.5}$ sampler and a special PM_{10} sampler. The $PM_{2.5}$ sampler must meet all requirements for a $PM_{2.5}$ reference method in 40 CFR part 50, appendix L, as well as additional requirements in part 53. However, the PM_{10} sampler required by the method is not a conventional PM_{10} sampler as described in 40 CFR part 50, appendix J; rather, it is a sampler specified to be identical to the $PM_{2.5}$ sampler of the pair, except that the $PM_{2.5}$ particle size separator is removed. This special PM_{10} sampler is identified as a ''PM_{10c}'' sampler to differentiate it from conventional PM_{10} samplers that meet the less exacting requirements of 40 CFR part 50, appendix J. In view of the similarity of the $PM_{10-2.5}$ FRM requirements to those of the $PM_{2.5}$ FRM, the new requirements will allow a $PM_{10-2.5}$ sampler pair consisting of samplers that have already been shown to meet the $PM_{2.5}$ FRM requirements (except for the $PM_{2.5}$ particle size separator in the case of the PM_{10c} sampler) to be designated as a $PM_{10-2.5}$ reference method without further testing.

C. Requirements for Candidate Equivalent Methods for $PM_{2.5}$ and $PM_{10-2.5}$

As pointed out in the preamble to the proposed rule (71 FR 2721), EPA believes very strongly that provisions to allow designation of Federal equivalent methods provide an important incentive to encourage the commercial development of innovative new and advantageous alternative methods for monitoring air pollutants. However, it is also important to show conclusively that any new candidate method will produce measurements comparable to those of the FRM and will have performance characteristics that are adequate to meet DQOs. At the same time, the testing that is necessary to show comparable and adequate performance must not be so burdensome that it undermines incentives for new method development.

Because of the complex nature of particulate matter, it is also complex to test the performance of PM monitoring methods. For methods for $PM_{2.5}$, EPA defined three classes of candidate FEMs (Classes I, II, and III) based on the extent to which the method differs from the FRM, so that the nature and extent of the performance and comparability testing necessary can be more closely matched to the nature of the candidate method. See 40 CFR 53.3(a)(2)–(4). In this final rule, as proposed, EPA is extending these same class definitions and tiered testing requirements to apply to $PM_{10-2.5}$ candidate FEMs as well.

Class I methods are limited to minor deviations from the FRM; Class II covers

[9] Henderson, R. Clean Air Scientific Advisory Committee (CASAC) Review of the EPA Staff Recommendations Concerning a Potential Thoracic Coarse PM Standard in the *Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information* (Final PM OAQPS Staff Paper, EPA–452/R–05–005). September 15, 2005. *http://www.epa.gov/sab/panels/casacpmpanel.html.*

Henderson, R. Letter from Dr. Rogene Henderson, Chair, Clean Air Scientific Advisory Committee to the Honorable Stephen L. Johnson, Administrator, U.S. EPA. Clean Air Scientific Advisory Committee Recommendations Concerning the Proposed National Ambient Air Quality Standards for Particulate Matter. March 21, 2006. *http://www.epa.gov/sab/pdf/casac-ltr-06-002.pdf.*

integrated-sample, filter-based, gravimetric methods deviating more significantly from the FRM; and Class III methods (originally) included all other methods not categorized as Class I or II. The three classes are described in more detail in the proposal preamble (71 FR 2721). As proposed, the definition of Class III FEMs is narrowed to include only continuous or semi-continuous analyzer methods having 1-hour or less measurement resolution, which are the Class III methods that by far hold the most potential for monitoring applications and FEM designation. The EPA has thus avoided the restrictions and complexity that would be necessary to accommodate the wide variety of other types of non-Class I or II methods that are unlikely to be economically and commercially practical. Also, the continuous operational nature of such Class III methods gives rise to a statistical advantage that allows more tolerant limits of adequate comparability, relative to a method that is not operated continuously, to achieve a similar limit of uncertainty in the monitoring data.

Class III continuous methods appear to offer many potential benefits for use in routine field monitoring networks. These automated analyzers eliminate most, if not all, of the pre- and post-weighing of sample filters, require less frequent on-site service, may be less costly to operate, and offer near real-time, electronic reporting of hourly (or less) mass concentration measurements (similar to data reporting that is common for gaseous pollutant monitors). The EPA is accordingly adopting the proposed Class III FEM provisions for $PM_{10-2.5}$ and $PM_{2.5}$ in today's rule, with some changes in response to comments.

Continuous methods, by nature, tend to have somewhat different performance characteristics from those of the corresponding filter-based FRMs, so the comparability and performance testing requirements must be adequately comprehensive and discriminating without being excessively burdensome. The Class III FEM requirements being promulgated today are based predominantly on demonstrating an adequate degree of comparability between candidate method measurements and concurrent, collocated Federal reference method measurements under a representative variety of site conditions. Many issues and much technical input were carefully considered during the development of the requirements, including peer review by the Ambient Air Monitoring and Methods Subcommittee of the Clean Air Scientific Advisory Committee. The salient Class III FEM requirements were summarized in the proposal preamble (71 FR 2722–2724). Not unexpectedly, a considerable number of comments were received in connection with the specifics of the proposed Class II and Class III requirements. The more significant of these comments are addressed below, after a summary of the proposal regarding requirements for Class II and Class III methods. Remaining comments are addressed in the *Response to Comments* document.

Class II candidate FEMs, although not offering the operational advantages of continuous Class III methods, are nevertheless important as well. Class II methods encompass the dichotomous and virtual impactor types of methods that can provide a more direct, gravimetric, filter-based measurement of $PM_{10-2.5}$ than available with the FRM. These methods are also most likely to fulfill the substantial need for collecting $PM_{10-2.5}$ samples that are physically separated from other particle sizes, or nearly so, for chemical species analysis. New requirements for Class II FEMs for $PM_{10-2.5}$ are being established in this final rule, and some of the previously established requirements for Class II FEMs for $PM_{2.5}$ are being changed somewhat to make them more consistent with the corresponding new requirements for $PM_{10-2.5}$ Class II FEMs and to incorporate some minor technical improvements.

The proposed Class II FEM requirements, as outlined in the proposal preamble (71 FR 2721–2725), were based on daily sampling; therefore, Class II equivalent methods used for determining compliance with the $PM_{2.5}$ NAAQS would generally have been restricted to daily sampling. However, in response to concerns about method performance in relatively clean areas, EPA has strengthened the additive bias (intercept) requirement. With this tighter performance criteria and considering that Class II methods are filter-based samplers, a minimum of a one-in-three day sample frequency will be appropriate to meet the network data quality objectives. Class II methods are also expected to be used for collecting samples used in chemical species analysis, which would not require daily operation. The character of the test sites specified for Classes II and III tests for both $PM_{2.5}$ and $PM_{10-2.5}$ are similar, so concurrent testing for $PM_{2.5}$ and $PM_{10-2.5}$ methods of both classes can be carried out, substantially reducing the testing burden for candidate FEMs that measure both $PM_{2.5}$ and $PM_{10-2.5}$ or for testing multiple candidate methods simultaneously.

Of particular note to instrument manufacturers, this final rule allows applications for Class II candidate FEMs for both $PM_{10-2.5}$ and $PM_{2.5}$ to optionally substitute the more extensive Class III comparability field tests in subpart C for some or all of the rather extensive and arduous laboratory wind tunnel tests, loading test, and volatility test of subpart F to which a Class II candidate FEM sampler may otherwise be subject. Such a substitution of test results may be particularly important when the special facilities necessary for the wind tunnel tests or other tests are not available. Concurrent testing of multiple methods under the Class III requirements may also help to reduce overall testing costs.

In regard to the proposed testing requirements for Class III (continuous) FEMs for $PM_{2.5}$ and $PM_{10-2.5}$, EPA specifically solicited comments related to the adequacy of the number and location of the test sites required for the field tests to determine comparability of a candidate method to the respective FRM. See 71 FR 2722. By definition, a designated FEM is generally qualified for use at any monitoring site in the U.S. (with the possible exception of some areas with extreme conditions), so the test requirements for comparability need to represent a wide variety of possible site conditions. The EPA proposed that candidate methods be tested within three general geographical areas: (1) The Los Angeles area in winter and summer seasons, (2) eastern U.S. in winter and summer, and (3) western U.S. in winter only (for a total of five 30-day test campaigns). Each proposed test site area was selected for representing particular and diverse typical site conditions.

In response to several comments addressing this issue, a fourth test site—in the U.S. Midwest, with tests required in the winter season only—has been added to the requirements to further increase the geographical diversity. However, the requirement for a winter test campaign in the eastern U.S. has been withdrawn while the requirement for a summer test campaign in the eastern U.S. has been retained, so the total number of required test campaigns (five) is unchanged. Comparability testing of a candidate method is costly, rendering it impractical to test a candidate method under all possible combinations of site and seasonal conditions that might be encountered in national PM monitoring networks. The EPA considers the specified complement of five test campaigns in the four specified geographical areas and two seasons to be reasonable to conduct and adequately representative of the diversity of site and seasonal PM

monitoring conditions across the U.S. As noted above, the two test site areas specified for testing candidate Class II FEMs are compatible with the test sites for candidate Class III methods, which will significantly reduce testing costs by allowing Class II and III candidate methods to be tested simultaneously at the same test site. Also, the test sites have been relabeled for ease of referencing east and west sites.

Some commenters expressed concern that the Class III comparability test standards might be inadequate because a candidate method that had an unacceptable seasonal bias (such as has been noted for some continuous methods) could be found acceptable, because in pooling test data from summer and winter seasons the biases would compensate. The EPA finds that the associated minimum correlation requirement of the regression test should adequately avoid that situation. Further, in the revised test requirements, summer and winter tests at the same site, where the data are pooled, are required at only one of the four required tests sites.

Another issue concerning the proposed testing requirements for Class III (continuous), as well as Class II candidate equivalent methods for $PM_{2.5}$ and $PM_{10-2.5}$, was the specific acceptance criteria for the regression analysis statistics—particularly the additive bias (intercept) parameter—of the comparison between collocated measurements obtained with the candidate and FRM methods. As proposed, the upper and lower limits for the regression intercept were specified as functions of the corresponding slope, with the acceptable combinations of slope and intercept represented by the area inside a trapezoid or a hexagon shape plotted on a slope-intercept coordinate system (Figures C–2 and C–3 in proposed revised subpart C of part 53 at 71 FR 2768–2769). These acceptance limits were based on statistical considerations related to the uncertainty allowable in making correct NAAQS attainment decisions for $PM_{2.5}$ (or similar comparisons of $PM_{10-2.5}$ concentrations to non-regulatory benchmarks). Several commenters were concerned that the range of acceptable intercepts proposed for Class II and III FEMs, although appropriate for DQOs related to attainment (or similar) decisions, may allow excessive measurement bias for FEMs used for other PM monitoring applications—especially those applications that require measurements of concentrations well below the level of the NAAQS.

In response to these comments and in deference to potential use of FEMs for a variety of applications, EPA has somewhat strengthened the range of allowable intercepts for those candidate FEMs. For Class III FEMs, new fixed limits of ±2.0 μg/m³ for $PM_{2.5}$ methods and ±7.0 μg/m³ for $PM_{10-2.5}$ methods have been added. For Class II FEMs for $PM_{10-2.5}$, the fixed intercept limit has been reduced from ±7.0 to ±3.5 μg/m³. (The intercept requirements proposed for candidate Class II $PM_{2.5}$ methods were re-examined and found to be appropriate as proposed.) The more restrictive intercept limits will reduce the maximum allowable measurement bias and are represented by smaller hexagonal acceptance areas, as specified in 40 CFR part 53, subpart C revised Table C–4 and as illustrated in revised Figures C–2 and C–3 of this final rule.

Nevertheless, EPA wishes to point out that, because of the design of the equivalent method comparability tests (which require no low-level test concentrations) and the nature of the regression analysis, a seemingly high positive or negative intercept resulting from the regression analysis of the test data is not necessarily indicative or likely to be characteristic of the actual measurement errors or bias of the candidate method relative to the FRM at low or very low concentrations. This situation may be particularly true when the concentration coefficient of variation (CCV) for the FEM test data (see 40 CFR 53.35(h)) is relatively low, resulting in greater uncertainty in the predicted additive bias (and in the multiplicative bias (slope) as well).

Class III FEMs will generally provide 1-hour concentration measurements (in addition to the required 24-hour measurements), and EPA asked for comments on whether the FEM provisions should include any specific requirements for 1-hour precision, and if so, whether a specific standard of performance should be specified and how it should affect FEM designation. See 71 FR 2723. Of the few comments received on this issue, most agreed with EPA that 1-hour precision is an important descriptor associated with a Class III candidate method and that 1-hour FEM test data should be submitted in a Class III FEM application so that the short-term precision can be determined, but no specific standard should be set for the precision parameter in connection with the FEM designation qualifications. A few commenters suggested that a precision performance parameter based on a running average of a few (e.g., 3 to 5) hours should be established and regulated, however, to preserve flexibility, EPA believes that precision estimates are better included in method-specific quality assurance guidance (to be used by instrument operators as they believe appropriate) rather than as a formal part of the FEM provisions. Therefore, no changes were made to the proposed requirement that FEM applicants submit the 1-hour FEM test data, and there is no designation requirement based on 1-hour precision or any other particular 1-hour based performance statistic.

The EPA also asked for comments on the adequacy and appropriateness of the proposed test requirements for Class II FEMs. See 71 FR 2724. Some commenters suggested that the proposed Class II tests were inadequate because there was more variation in the PM at different sites than could be represented in the tests—particularly in regard to chemical compositions—and suggested that continued FEM designation should be conditioned on a mandatory periodic reassessment of local-agency comparisons to FRM measurements. The EPA recognizes that data produced by all FEMs operated in monitoring networks under 40 CFR part 58 should meet the data quality objectives (DQOs) of 40 CFR part 58, appendix A, section 2.3.1 on a continuing basis. The operational requirements of appendix A will help ensure this. Moreover, EPA can invoke designation cancellation procedures for the method designation under 40 CFR 53.11 (Cancellation of reference or equivalent method designation) if EPA observes that DQOs are not being maintained for a particular designated Class II equivalent method (or for any FEM or FRM). However, EPA believes that designation cancellation should be initiated by EPA when necessary, rather than have designations conditioned on specific periodic reassessments as commenters suggested. Other commenters suggested that the test sites be approved by both EPA and the STAPPA/ALAPCO Monitoring Committee, but EPA believes that would be cumbersome and unnecessary.

D. Other Changes

EPA proposed several other relatively minor changes to various provisions of subparts A, C, E, and F of part 53. See 71 FR 2724–2725. Organizational changes in subpart C consolidate the provisions for various types of methods, making them easier to understand. Other changes clarify or simplify some existing provisions for PM_{10} and $PM_{2.5}$ Class I and II FEM testing and implement minor technical improvements to test protocols, with little, if any, impact on the nature or efficacy of the tests. Minor changes are made to subparts A, E, and F to incorporate the new $PM_{10-2.5}$ provisions and some new definitions,

make a few administrative adjustments, and incorporate a few minor technical changes. These changes are described more completely in the proposal preamble (71 FR 2724), and they are being adopted as proposed, as no comments were received pertinent to these minor changes.

After considering all comments carefully, EPA determined that no further changes should be made to the proposed new or revised FRM and FEM requirements. The EPA is thus adopting the proposed new or revised requirements and provisions for Federal reference and Federal equivalent methods for $PM_{2.5}$ and $PM_{10-2.5}$, modified to incorporate the changes described above.

V. Discussion of Regulatory Revisions and Major Comments on Proposed Amendments to 40 CFR Part 58

A. Overview of Part 58 Regulatory Requirements

Part 58 of 40 CFR, Ambient Air Quality Surveillance, contains requirements for ambient air monitoring programs operated by States (or designated local agencies). As proposed, the structure of part 58 remains much the same as the 1997 version. Proposed subparts A through G, containing 40 CFR 50.1 through 50.61, provide definitions of terms; require the operation of certain numbers and types of monitors by certain dates; require the use of certain monitoring methods, quality system practices, and sampling schedules and frequencies; require annual plans describing a State's monitoring network and planned changes to it; provide criteria for EPA approval of planned changes; require data submission and certification that submitted data is accurate to the best of the knowledge of responsible State official; address special rules regarding special purpose monitors; provide rules for comparing monitoring data to applicable National Ambient Air Quality Standards (NAAQS); require reporting of the Air Quality Index (AQI) to the public in some areas; and provide for monitoring directly by EPA if a State fails to operate required monitors. As proposed, part 58 also includes appendices A, C, D, E, and G which were referenced by various numbered sections in subparts A through G. These appendices contain many detailed requirements, as well as considerable explanatory or background material and non-binding advice. Appendix A addresses quality system requirements, appendix C addresses monitoring methods and equipment, appendix D mostly addresses the number of required monitors and their placement within a metropolitan or other area, appendix E addresses the details of monitoring station layout, and appendix G addresses AQI reporting. (Subpart B of the 1997 version was proposed to be removed. Subpart F was already reserved in the 1997 version. No amendments were proposed to the part 58 requirements for reporting of the AQI and the associated appendix G.)

To aid in understanding the provisions of the final part 58 and their relationship to the 1997 and proposed provisions, the following discussion for the most part follows the order of the final part 58, addressing each affected numbered section and then the appendices.

B. General Monitoring Requirements

1. Definitions and Terminology

The EPA proposed to discontinue the use of the term ''National air monitoring stations (NAMS)''. See 71 FR 2720. Previously, this term was used to designate Federal reference method (FRM) and Federal equivalent method (FEM) monitors which were operated to meet set requirements for the number (and, for some pollutants the type of location) of monitors and which required EPA Administrator approval for changes, as distinguished from ''State and local air monitoring stations (SLAMS)'' which referred to additional FRM and FEM monitors for which generally there was no minimum number, for which siting was more at the State's discretion, and for which changes were approved by the Regional Administrator.

The EPA proposed a new definition for ''National Core (NCore)'' stations.

The definition of ''State or local air monitoring stations (SLAMS)'' was proposed to be modified to include NCore, Photochemical Air Monitoring Systems (PAMS), and all other State or locally operated stations (such as $PM_{2.5}$ speciation stations) that have not been designated as a special purpose monitor or monitoring station (SPM). This change was proposed for convenience in referencing these types of monitors together because some provisions in the rule apply to all of them but not to SPMs. See 71 FR 2720. Previously, ''SLAMS'' referred only to FRM and FEM monitors.

The term, ''Approved regional methods'' (ARMs), proposed at 71 FR 2720, is added to refer to alternative $PM_{2.5}$ methods that have been approved by EPA for use specifically within a State, local, or Tribal air monitoring network for purposes of comparison to the NAAQS and to meet other monitoring objectives, but which may not have been approved as FEM for nationwide use.

The EPA proposed to adopt a new term, ''Primary quality assurance organization'' to clarify the working definition of the term ''Reporting organization'' currently utilized in section 3.0.3. of 40 CFR part 58, appendix A, Quality Assurance Requirements, and to avoid confusion with the different way ''reporting organization'' has come to be used in a related but distinct context (final uploading of data to the Air Quality System). See 71 FR 2778.

The EPA also proposed additional definitions to be consistent with terminology used in 40 CFR part 50, appendix O, the FRM for $PM_{10-2.5}$. See 71 FR 2777. Modifications to the definitions of key geographical terms were proposed, as needed, to reflect changes in U.S. Census Bureau usage since the last revision to monitoring regulations.

The EPA received some questions seeking clarification of the new term ''Primary quality assurance organization,'' which are addressed in the *Response to Comments* document available in the docket. No other adverse comments were received on these proposed definitions, and this final rule includes all of them.

2. Annual Monitoring Network Plan and Periodic Network Assessment

The EPA proposed to consolidate current requirements for the SLAMS air quality surveillance plan and NAMS network description into elements of the annual monitoring network plan described in 40 CFR 58.10 of the proposed rule. See 71 FR 2725. The annual monitoring network plan would provide a statement of purpose for each monitor in a monitoring agency network and provide evidence that siting and operation of each monitor meet the requirements of appendices A, C, D, and E of part 58, as applicable. The EPA also proposed the addition of some required elements to the annual monitoring network plan and proposed to add a new requirement for a periodic network assessment.

The EPA received comments on a number of specific elements within the annual monitoring network plan and with regard to the network assessment requirement. The comments that were the basis for modifications to the proposed rule are discussed briefly here. Detailed responses to all comments are provided in the *Response to Comments* document available in the docket.

Comments were received on the proposed requirement for a 30-day

public inspection period before State submittal of a draft annual monitoring network plan to the Regional Administrator as well as on the proposed requirement for Regional Administrator approval of annual monitoring network plans seeking SLAMS network modifications including new monitoring sites. Some commenters requested clarification regarding what methods would be considered acceptable for making documents available for public inspection. Commenters also expressed concern that the 120 days proposed for Regional Administrator review and approval/disapproval would result in unnecessary delays.

The EPA notes the general support in the comments for the public inspection requirement. Commenters also supported the flexibility in the proposed rule which would allow monitoring agencies to design and implement appropriate ways of allowing this inspection. The EPA supports use of monitoring agency Web sites for such postings, along with other means of providing public notice including hard-copy posting in libraries and public offices. Although the public inspection requirement does not specifically require States to obtain and respond to received comments, such a process is encouraged with the subsequent transmission of comments to the appropriate EPA Regional Office for review. Therefore, EPA has modified this final rule from the proposal to specify that where the State has provided for a public comment process and provided any comments received to EPA, and the posted plan has not been substantially altered as a result of the public comments, the requirement for the Regional Administrator to obtain public comment by a separate process can be waived. The 120 days allowed for Regional Administrator review of an annual plan is a feature of the current monitoring rule, and has been kept in this final rule.

The EPA received many comments on the proposed requirement for the annual monitoring network plan to contain cost information. See 71 FR 2780. Commenters were concerned that no details were provided regarding what information would be required and how the information would be used. The accounting difficulty in calculating such cost information was also noted along with concerns regarding the administrative burden of preparing and documenting the cost estimates.

The EPA has considered the proposed requirement for cost information in the annual monitoring network plan and agrees that considerable effort would be needed to develop guidance to standardize the development of financial information and for States to collect and summarize the information for submittal. Without such standardization, cost information would be difficult to interpret. In view of these comments, EPA has deleted this element from the list of required information to be contained in the annual monitoring network plan.

The EPA proposed a new requirement that the annual monitoring network plan consider the ability of existing and proposed sites to support air quality characterization for areas with relatively high populations of susceptible individuals (e.g., children with asthma), and, for any sites that are being proposed for discontinuance, the effect on data users other than the agency itself, such as nearby States and Tribes or health effects studies. See 71 FR 2780. Several commenters noted that this requirement would be challenging to implement and involves knowledge of public health that may not be readily available to monitoring organizations. In addition, it was noted that, absent the availability of a centralized information clearinghouse, it would be difficult for States to be aware of all possible users of data for health studies or other types of research.

This new element of the annual monitoring network plan highlights the importance that EPA places on the consideration of sensitive populations when evaluating the relative value and representativeness of monitoring sites, particularly for areas where one or more NAAQS may be approached or exceeded.[10] The EPA acknowledges the potential challenge in obtaining information about the distribution of susceptible individuals in specific geographic areas around existing and proposed sites, and has purposely defined the requirement as a ''consideration'' to provide significant latitude for monitoring organizations to determine the complexity and depth of their response. In recognition of the potential complexity of preparing assessments of susceptible populations on a sub-county sized spatial scale as represented by typical monitoring sites, in this final rule EPA has moved this requirement to become a required element of the 5-year network assessment rather than the annual monitoring network plan.

With regard to the proposed provision requiring States to consider the effect on data users of proposed actions to discontinue sites, EPA notes that States are already required to make their annual network monitoring plans available for public inspection and that process provides the basic framework for disseminating information about anticipated site discontinuations. The EPA recognizes that there are many potential users of air quality information and that States cannot be aware of all such users. However, to the extent that information about site shutdowns can be disseminated more widely, there are benefits to be gained by protecting key monitors that (for example) support ongoing health studies or that are the basis for long-term trend analyses, or otherwise provide information that is used by stakeholders other than the operating agency. As such, EPA has retained this provision in this final rule. The EPA will work with States and health organizations to explore options for tracking the status of key air quality sites.

The EPA received many comments in response to the proposed requirement for a network assessment to be completed every 5 years and to be submitted with the required annual network monitoring plan. Commenters acknowledged the overall value of a more complete evaluation of monitoring programs but expressed concern about the resource burden in meeting the requirement.

Network assessments are a key tool to help ensure that the right parameters are being measured in the right locations, and that monitoring resources are used in the most effective and efficient manner to meet the needs of multiple stakeholders. Network assessments can help identify new data needs and associated technologies, find opportunities for consolidation of individual sites into multi-pollutant sites, and identify geographic areas where network coverage should be increased or decreased based on changes in population and/or emissions. The EPA has already issued draft guidance to describe the possible techniques that States can use in developing their assessments, and has purposely limited the required elements to provide flexibility in the amount of resources that would be required. After consideration of the comments, EPA has retained the network assessment requirement in this final rule. In light of the concerns raised about the resource requirements needed to complete network assessments, the deadline for the first required assessment under this final rule has been delayed an additional year to July 1, 2010.

The EPA is not adopting the proposed requirement for a separate plan

[10] See S. Rep. No. 91–1196. 91st Cong. 2d Sess. 10 (1970) (NAAQS is to be set to protect sensitive, at-risk population groups).

establishing a network of $PM_{10-2.5}$ stations as an addendum to the annual monitoring network plan (see 71 FR 2740, 2779) since the only required $PM_{10-2.5}$ monitoring will take place as part of the NCore multi-pollutant stations, already covered by the proposed plan due July 1, 2009. The EPA has added clarifying language to this final rule requiring Administrator approval for the NCore plan due July 1, 2009 and subsequent annual monitoring network plan elements proposing modifications, consistent with the requirement for Administrator approval of NCore stations in section 3(a) of appendix D.

The proposed plan element supporting $PM_{10-2.5}$ suitability tests for NAAQS comparisons likewise is not being adopted since EPA is not finalizing the proposed $PM_{10-2.5}$ NAAQS.

The proposed prescriptive wording with reference to public hearings in the context of reviews of changes to violating $PM_{2.5}$ monitors and/or community monitoring zones (71 FR 2780) has been modified to specify that draft plans containing such proposed changes to $PM_{2.5}$ networks must be made available for public inspection and comment by States prior to submission to the EPA Regional Administrator but that States can design the process for achieving such goals.

3. Operating Schedules

The EPA proposed that manual $PM_{2.5}$ monitors at SLAMS be required to operate on a 1-in-3 day sampling frequency, except under certain conditions and when approved by the Regional Administrator. See 71 FR 2780. As discussed in section II.E.1 of the preamble to the final revisions to the PM NAAQS, published elsewhere in this **Federal Register**, commenters pointed out a potential bias in the method used to calculate the 98th percentile form of the 24-hour $PM_{2.5}$ NAAQS. As explained there, to avoid this potential bias, EPA is requiring daily sampling at design value sites that are within 5 percent of the 24-hour NAAQS for $PM_{2.5}$.

The EPA proposed that manual $PM_{10-2.5}$ samplers at SLAMS stations must operate on a daily schedule, without a requirement for any collocated continuously operated FEM $PM_{10-2.5}$ samplers. See 71 FR 2780. Numerous commenters noted that a 1-in-3 day sampling frequency was acceptable for $PM_{2.5}$ sites and said that the same sampling frequency for $PM_{10-2.5}$ would produce sufficient data for comparison to the proposed 24-hour $PM_{10-2.5}$ NAAQS averaged over 3 years. Commenters also noted the lack of currently available continuous FEM $PM_{10-2.5}$ instruments and the burdensome resource requirements associated with daily sampling requirements using the proposed filter-based FRM.

The proposed requirement for daily $PM_{10-2.5}$ sampling was based on a data quality objective system analysis that identified such a frequency as being a key factor in reducing statistical uncertainty at concentrations near the level of the proposed 24-hour $PM_{10-2.5}$ NAAQS. Since EPA is not finalizing a $PM_{10-2.5}$ NAAQS but instead is requiring a more limited set of $PM_{10-2.5}$ monitors at NCore sites to support objectives other than and (obviously) not including NAAQS compliance, additional flexibility in sampling frequency requirements is appropriate. Although daily sampling of $PM_{10-2.5}$ at NCore sites remains a desirable outcome, and will become a more practical goal with the advent of continuous FEM monitors in several years, EPA has reduced the $PM_{10-2.5}$ sampling frequency requirement in this final rule to 1-in-3 days.

The EPA proposed reducing the sample frequency requirement for PM_{10} manual methods. Reducing the sample frequency for PM_{10} was possible since EPA had proposed to have daily sampling of $PM_{10-2.5}$ to support protection from thoracic coarse particles. As published elsewhere in today's **Federal Register**, EPA is retaining the 24-hour PM_{10} standard and not finalizing a $PM_{10-2.5}$ standard. The EPA is also only finalizing a limited network of $PM_{10-2.5}$ monitors at multi-pollutant NCore stations for scientific purposes. Therefore, since the existing requirement for PM_{10} sample frequency is for daily sampling for the site with the expected maximum concentration in each area, and previous assessments of the 24-hour standard demonstrates that maximizing sample frequency will minimize decision errors, EPA is retaining the existing daily sample frequency requirement for the site with expected maximum concentration in each area. This existing requirement also allows for other sites in the same area to operate on a 1-in-6 day sample frequency. Sample frequency relief is possible for expected maximum concentration sites that are significantly away from the 24-hour PM_{10} NAAQS and in seasons exempted by the Regional Administrator.

4. Monitoring Network Completion for $PM_{10-2.5}$ and NCore Sites

The proposed requirement for specified numbers of $PM_{10-2.5}$ sites to be physically established no later than January 1, 2009 is not included in this final rule. However, by January 1, 2011, States must implement the less extensive monitoring for $PM_{10-2.5}$, including speciation sampling, as part of the generally-applicable requirement to operate NCore multipollutant monitoring stations by that date. A plan for the implementation of the required NCore multipollutant monitoring stations, including site selection, is due July 1, 2009.

Little comment was received on the requirement for the NCore multipollutant sites to be physically established no later than January 1, 2011, and that requirement remains unchanged in this final rule as EPA continues to believe that this is practical and desirable.

5. System Modifications

In part, EPA started this rulemaking based on the recognition by EPA and leaders of State and local monitoring agencies that State/local monitoring networks should be modified to reduce some types of monitoring activity in some areas and to begin new types of monitoring. The EPA proposed rule changes to revise the minimum required number of monitors for ozone (O_3), $PM_{2.5}$, lead (Pb), and PAMS pollutants and to eliminate altogether the minimum number of required monitors for carbon monoxide (CO), sulfur dioxide (SO_2) and nitrogen dioxide (NO_2) in order to utilize scarce resources more productively by allowing for reductions in the number of monitoring sites where appropriate. See 71 FR 2729.

The EPA stated in the proposal that the remaining requirements for the minimum number of monitors for Pb, $PM_{2.5}$, and O_3 were intended to be necessary but not always sufficient to meet the requirements in section 110(a)(2)(B) of the Clean Air Act (CAA) that State implementation plans (SIPs) provide for operation of appropriate systems to monitor, compile, and analyze data on ambient air quality. Similarly, although EPA believes that one-size-fits-all rules for the number of CO, SO_2, and NO_2 monitors are no longer appropriate in light of the rarity of NAAQS violations for those pollutants, EPA believes that some monitoring should be continued in many areas for these pollutants. Accordingly, EPA proposed to continue to require States to propose changes in their monitoring networks, including discontinuation of monitors, and obtain EPA approval before making changes, even when the remaining minimum requirements, if any, for number of monitors would still be met after the

changes. The EPA approval would be given by the Regional Administrator, usually through approval of the annual monitoring network plan, except for changes involving NCore sites, PAMS sites, and $PM_{2.5}$ speciation trends sites which would require Administrator approval.

While local situations need to be considered individually, EPA proposed six criteria for approval of requests to discontinue monitors. See 71 FR 2749. To summarize, the six criteria addressed: (1) Any monitor which could be shown to have a low probability of future violations; (2) a CO, PM_{10}, SO_2, or NO_2 monitor that has been reading consistently lower than another monitor in the same area; (3) any highest reading monitor that has not indicated any NAAQS violation in the previous 5 years and for which the approved SIP provides for an alternative to continued monitoring; (4) any monitor which cannot be compared to a NAAQS because of siting considerations; (5) any monitor designed only to measure transport from upwind areas if another transport monitor were replacing it; and (6) any monitor for which logistical problems make continued operation at the current site impossible. Situations not addressed by these criteria would be considered on a case-by-case basis.

The EPA received a number of comments on the proposed removal of the minimum monitoring requirements for some of the criteria pollutants, on the revision of the minimum numbers of monitors for other criteria pollutants, on the six proposed criteria for discontinuing monitors, and on the issue of discontinuing monitors more generally, mostly from State and local monitoring agency officials. This final rule provisions on minimum numbers of monitors for O_3, $PM_{2.5}$, PM_{10}, and Pb are discussed in section V.E of this preamble. Comments on the other parts of the proposal are addressed here. A few commenters specifically endorsed all or part of these proposals, or at least the intention to facilitate reductions in unnecessary or duplicative monitoring activities. Most commenters expressed concern over the proposals.

A number of commenters appear to have interpreted the proposals as indicators of network reductions EPA intended to require monitoring agencies to make, and expressed opposition to such reductions. The EPA clarifies here that EPA believes that proposals for network modifications should generally be initiated by the monitoring agency; EPA does not intend to compel any agency to remove any monitor. The proposals related to network modifications, and the provisions in this final rule, govern only EPA's consideration of changes which monitoring agencies seek to adopt. The EPA recognizes that funding constraints may require agencies to discontinue monitors that they otherwise would operate, but this reinforces the need for EPA review and the usefulness of having criteria for discontinuance to govern that review.

A few commenters suggested that EPA include in the rule or provide via guidance specific formulas or calculation procedures regarding the estimation of the probability of a future NAAQS exceedance, which is the basis of the first of the six proposed adjudicative criteria. The EPA intends to provide guidance on this matter in the future, but we believe that binding formulas or procedures in rule form would preclude development of better general procedures and the sort of case-specific analysis of unique factors that is likely to be appropriate in some situations.

A number of commenters stated that the six proposed criteria were overly focused on whether a monitor is providing data for use in making comparisons to the NAAQS for purposes of attainment/nonattainment findings, and that decisions to remove or retain a monitor should also recognize the utility of the monitor in satisfying other required monitoring objectives. Section 1 of the proposed appendix D of 40 CFR part 58 stated that air monitoring networks must be designed to meet three monitoring objectives: (1) Providing air pollution data to the public; (2) supporting compliance with ambient air quality standards and emission strategy development; and (3) supporting air pollution research studies. Some commenters pointed out that EPA has articulated in the draft National Ambient Air Monitoring Strategy [11] seven objectives for the NCore multipollutant monitoring stations (overlapping in part with the three objectives in section 1 of appendix D) and stated that single-pollutant stations should be considered to be part of an overall network to meet these objectives. The EPA agrees that these two sets of overlapping objectives are important and that monitors should not be discontinued without regard to whether these objectives will continue to be met, but EPA believes the proposed criteria, along with other provisions regarding approval of annual monitoring network plans and periodic network assessments, protect the required monitoring objectives. The paragraphs below address two objectives that were most often mentioned by commenters.

Several commenters stated that ambient monitoring can serve as a continuing check on the compliance of a specific source, or sources in the aggregate, with applicable emissions limits. The EPA believes that given that factors such as wind direction, dispersion conditions, and atmospheric reactivity conditions can greatly influence the relationship between emissions and ambient concentrations, situations are infrequent in which ambient monitoring is a critical, or the most important, element of source compliance monitoring. Other EPA rules address requirements for direct emissions and compliance monitoring for many types of sources. Ambient monitoring agencies will have the option of continuing to operate ambient monitors they feel are useful for this objective.

Some commenters stated that the ability to track trends in air quality and assess whether those trends are consistent with trends expected from the emission control program in general or from specific control measures (i.e., accountability) could be impaired if too many existing monitors are removed. The EPA believes that tracking trends is most important for O_3, $PM_{2.5}$, and PM_{10} because these are the NAAQS with more than a few remaining nonattainment areas. For these pollutants the revised requirements in this final rule for minimum number of monitors, the new requirement for NCore multipollutant monitoring stations, and the interest of monitoring agencies in continuing these types of monitoring as indicated by the comments themselves will, in EPA's opinion, result in networks that are appropriately robust for tracking trends and assessing causal factors. The EPA believes that the availability of multiple collocated and time resolved measurements at NCore sites will be a major advantage in this work.

The *Response to Comments* document available in the docket explains in more detail how the other objectives mentioned by commenters are consistent with the six proposed criteria.

Accordingly, this final rule mirrors the proposals, with the following four exceptions:

(1) In the first criterion, which as proposed would have allowed the removal of a monitor for any criteria pollutant if it has shown attainment over the last five years and has less than a 10 percent probability of exceeding 80 percent of the NAAQS over the next three years and if it is not specifically

[11] "Draft National Ambient Air Monitoring Strategy," December 2005.

required by the attainment plan or maintenance plan, this final rule also conditions the removal of the last remaining SLAMS monitor in a nonattainment or maintenance area on the attainment plan or maintenance plan not having any contingency measure triggered by air quality concentrations. If a plan does have such a trigger, a plan revision to remove that trigger would have to be adopted by the State and approved by EPA. The EPA will address the requirements for such a revision at a future date.

(2) While the preamble described a sixth criterion for approval of State proposals to discontinue a monitor, having to do with logistical problems at a current site, the proposed rule text inadvertently omitted this criterion. This final rule includes it.

(3) The second and third criteria have been slightly revised to make them applicable also to the lower reading monitor of a pair that are in the same attainment area and county, and not just to the lowest reading monitor of a pair that are in the same nonattainment area or maintenance area. A commenter pointed out the need for this revision to achieve the obvious intention of the proposal.

(4) The third proposed criterion, worded to apply only to ''the highest reading monitor * * * in a county,'' required that a described monitor could be removed only if the approved SIP provided for a specific, reproducible approach to representing the air quality of the affected county in the absence of actual monitoring data. While EPA intended the highest reading monitor to be addressed in this third criterion, EPA did not intend to preclude the possibility that a lower reading monitor ineligible for removal under the first two criteria could be addressed also. This final rule revises the criterion to encompass any monitor not eligible for removal under the first two criteria where applicable.

6. Annual Air Monitoring Data Certification

The EPA proposed a shorter timeframe for States to submit the annual letter certifying ambient concentration and quality assurance data to the Administrator. See 71 FR 2749. Under current requirements, States have until July 1 to certify data from January 1 to December 31 of the previous year. For data collected in 2006, for example, the annual certification letter is due no later than July 1, 2007. Under the proposed requirement, the schedule for certification would be moved up 60 days, with the data certification letter required under the accelerated deadline to be due by May 1, 2009, for data collected in 2008. The EPA proposed this change to provide opportunity for an earlier start and completion for nationwide designation actions, to provide States and the public with earlier design values in time for most ozone seasons, and to support other data uses that could benefit from earlier data certification.

In response, some commenters expressed reservations about the accelerated schedule as it applies to all submitted data, while others supported the proposal for continuous instruments that collect and report hourly data but not for data requiring lab analysis for samples collected in the field. These commenters were concerned about the feasibility and cost of meeting an accelerated schedule. The EPA notes that some States have recently provided certifications for filter-based data ahead not only of the July 1 deadline, but also of the proposed May 1 deadline, when such certifications were deemed advantageous by the States for data uses such as $PM_{2.5}$ nonattainment designations. This suggests that all States could be capable of certifying data by the proposed May 1 deadline, if not earlier, if they invest in needed improvements in information technology or efficiencies in administrative procedures. Therefore, this final rule includes the proposed May 1 deadline. In recognition of the time necessary for States to adjust to the accelerated certification requirement, the implementation date has been delayed 1 year, until May 1, 2010, for data collected in 2009.

One commenter questioned the types of annual summary reports that would required to be submitted with the data certification letter, finding the proposed requirements of 40 CFR 58.15(b) unclear. The EPA notes that different reports were mentioned in the proposal to clarify the difference between SLAMS and SPM monitors (only FRM, FEM, and ARM SPM monitors are required to be certified) and to ensure that annual summary reports are provided for both types of monitors. Providing one annual summary report for certification of both SLAMS and SPM data is appropriate. An additional report providing a summary of precision and accuracy data is necessary to demonstrate that applicable monitors meet appendix A criteria.

7. Data Submittal

The EPA proposed to reduce the data reporting requirements associated with $PM_{2.5}$ FRMs to ease the data management burden for monitoring agencies. See 71 FR 2748. The following Air Quality System (AQS) reporting requirements were proposed for elimination: Maximum and minimum ambient temperature, maximum and minimum ambient pressure, flow rate coefficient of variation, total sample volume, and elapsed sample time. AQS reporting requirements were retained for average ambient temperature and average ambient pressure, and any applicable sampler flags.

The EPA also proposed a requirement for the submission of data on $PM_{2.5}$ field blank mass in addition to $PM_{2.5}$ filter-based measurements. See 71 FR 2749. Field blanks are filters which are handled in the field as much as possible like actual filters except that ambient air is not pumped through them, to help quantify contamination and sampling artifacts. This requirement only applies to field blanks which States are already taking into the field and weighing through their laboratory procedures.

Commenters supported the proposed changes to data submittal requirements and they are being finalized without modification. The requirement for reporting of field blank mass data begins with filters collected on or after January 1, 2007.

8. Special Purpose Monitors

The January 17, 2006 proposal included a background explanation of the historical distinctions between regular air monitors and special purpose monitors (SPMs) with respect to monitoring objectives, siting actions, quality assurance, and use of data. See 71 FR 2745. The EPA proposed a revision of the definition of SPM, to the effect that any SPM must be in excess of the required minimum number of monitors and that designation of a monitor as an SPM be made by the State. The EPA also proposed that States would continue to be able to choose to start and stop SPMs at will, without needing EPA approval and that States be required to submit all data from SPMs to the AQS operated by EPA. In addition, EPA proposed that States follow 40 CFR part 58 appendix A quality assurance requirements for any SPM that utilizes a FRM, FEM, or ARM instrument and which is sited consistently with the requirements of appendix E (which does not apply to SPMs on a mandatory basis). The existing rule provides that States follow these requirements only if the data from the SPM are intended by the State for use in attainment/nonattainment determinations.

The EPA also proposed that data from the first 2 years of operation of a SPM (even if using a FRM, FEM, or ARM

instrument and meeting appendix A and E requirements) would not be used by EPA in attainment/nonattainment findings for $PM_{2.5}$ or O_3 if the monitor stopped operating by the end of those 2 years. See 71 FR 2745. For CO, SO_2, NO_2, Pb, and the 24-hour PM_{10} NAAQS, EPA proposed that data from the first 2 years of operation of a SPM would not be used by EPA for nonattainment redesignations but that such data would be considered when determining whether a nonattainment area had attained the NAAQS. The reasons for this distinction by pollutant had to do with differences in the form of the respective NAAQS and whether the EPA action in question is mandatory or discretionary. These reasons were explained in detail in the preamble to the proposal. Finally, EPA proposed that currently operating monitors not already designated as SPMs could not be designated as SPMs after January 1, 2007.

The EPA received many comments on these issues, mostly from State and local air monitoring officials but also from two industry groups. No commenter objected to the flexibility States have to start and stop SPMs. That flexibility is retained in this final rule.

Some commenters pointed out an ambiguity in the proposed requirement that data from SPMs be submitted to AQS. The EPA intended, but did not clearly state in the proposal, that this requirement apply only to SPMs that are FRMs, FEMs, or ARMs and that are operated consistently with the requirements of 40 CFR 58.11 (network technical requirements), 40 CFR 58.12 (operating schedule), and part 58, appendix A (quality assurance requirements). These would be the SPMs that produce data that will be of most interest to EPA and the public, because except for possible inconsistencies with the siting requirements of appendix E to part 58, these are the type of data which can be compared to the respective NAAQS. This final rule provides this clarification.

One commenter suggested that the specific reference to the AQS data system be made more general, to provide for the development and use of other suitable data submission systems in the future. This comment is relevant to all monitoring data, not just data from SPMs. This final rule retains references to AQS. If AQS is replaced or supplemented with approved alternatives in the future, terminology can be updated at that time.

One State official supported the proposal that SPMs be subject to the regular quality requirements of appendix A, if the SPM is a FRM, FEM, or ARM. All other commenters on this issue contended that States should be allowed more flexibility. Most of these commenters agreed that regular quality assurance practices were desirable generally, but stated that practical difficulties can arise at a specific SPM site, such that requiring regular quality assurance practices would effectively mean that the SPM could not be legally operated at all and the useful data it could have provided would be lost to users.

After considering these comments, EPA continues to believe that regular quality assurance practices are practical and of reasonable cost and feasibility in nearly all situations, as shown by successful adherence to these practices at thousands of regular monitoring stations. They are appropriate in most cases and should be the presumptive requirement. As proposed, this final rule provides for a transition period by delaying this requirement until January 1, 2009. However, EPA recognizes that unusual situations may exist in which exceptions should be allowed. For example, a State, perhaps with EPA encouragement, might operate an automated O_3 monitor year-round but have difficulty getting personnel and equipment to the site regularly in winter due to road conditions. This final rule allows the Regional Administrator to approve other appropriate quality assurance practices if the requirements of 40 CFR part 58 appendix A would be physically and/or financially impractical due to physical conditions at the monitoring site and the quality assurance practices are not essential to achieving the intended data objectives. This approval can be given separately, or as part of the approval of the annual monitoring plan. Approval of alternative quality assurance practices for all or part of the year does not qualify the affected data from an affected SPM for comparison to the relevant NAAQS.

Most of the comments received on the SPM proposals addressed the application of SPM data to attainment/nonattainment findings and designations. One citizen supported the proposal. About 20 commenters argued for a general, indefinitely long prohibition on the use of data from SPMs for nonattainment findings and designations, for States to have a way of blocking EPA from using particular SPM data indefinitely, or for States to be able to negotiate in advance with EPA for particular SPM data to not be used. Those commenters who explained their position generally stated that the risk of a nonattainment finding would discourage voluntary special purpose monitoring that could benefit air quality management.

In the proposal preamble (71 FR 2745, January 17, 2006), EPA stated that it understood and to some degree sympathized with the thrust of very similar input EPA had received during the development of the proposed rule, but that EPA believed that under the CAA EPA may not legally ignore technically valid data from FRM and FEM (and by implication and logical extension ARM) monitors when making attainment or nonattainment determinations. The comments have not provided EPA with any reason to change this view of our legal obligation. There are only two situations where EPA would not have to consider such data. One situation is when the data would be insufficient for making a finding because it is of insufficient duration given the averaging period or form of the relevant NAAQS. This was the basis for the proposal concerning $PM_{2.5}$ and O_3 for which the form of the NAAQS requires 3 years of data.

The other situation is when EPA has the discretion to simply not make a finding or to take an action, for example by taking no action to redesignate an area to nonattainment even though a SPM indicates a new violation of a NAAQS subsequent to the area's initial designation as attainment. This was the basis for the proposal concerning the CO, SO_2, NO_2, Pb, and PM_{10} NAAQS. Unlike the $PM_{2.5}$ and O_3 NAAQS, the NAAQS for these pollutants have forms that allow a nonattainment finding based on only 1 or 2 years of data, either because the NAAQS is explicitly based on only one year of data or because a single year of data may include so many exceedances that it is certain that the average number of expected exceedances over three years will be greater than one. However, for these other NAAQS, EPA does not have a mandatory duty to make nonattainment redesignations until such time as the NAAQS are revised. In the absence of either a NAAQS revision or a State request for redesignation, the Administrator has discretion in determining whether to redesignate an area based on data from a SPM which has operated for two years or less. The EPA does regard air quality violations seriously, and does expect States to take actions to reduce air quality to healthy levels in any areas that are experiencing violations. However, EPA recognizes that there are other ways to address such violations besides redesignating an area as nonattainment. For example, EPA can work directly with a State and nearby industries to take appropriate actions to reduce emissions that are

contributing to the violation. The EPA has worked in this way with States in the past. In the case of PM_{10}, EPA stated in section VII.B of the preamble to the NAAQS rule (printed in today's **Federal Register**) that because EPA is retaining the current 24-hour PM_{10} standards, new nonattainment designations for PM_{10} will not be required under the provisions of the Clean Air Act.

With respect to the second situation, applicable to the CO, SO_2, NO_2, Pb, and 24-hour PM_{10} NAAQS, EPA believes it could have extended the proposed 2-year exclusion from use of SPM data in making nonattainment findings to a longer period. However, such a provision could exclude more data than appropriate and could prevent consideration of violations in making nonattainment decisions even when a SPM monitor has shown violations over 3 or more years. The EPA believes that in some and perhaps many situations like this, it would be good policy to avoid a nonattainment designation and to find other less prescriptive approaches to reducing risk to public health. EPA also believes, however, that it could be appropriate to base a nonattainment designation on such data in some other cases, where a nonattainment designation is the appropriate way to deal with a long-term nonattainment problem. Since under the final rule EPA still has the discretion not to make nonattainment redesignations based on three more years of data if EPA so chooses, EPA concludes the appropriate approach is not to universally extend the exclusion and rather rely on the Administrator's discretion to redesignate areas only in appropriate cases.

This final rule follows the proposed approach for use of data from SPMs. The EPA would like to emphasize, however, that States and other parties will have practical ways of obtaining useful information using SPMs without risk of a nonattainment redesignation. In many situations, the potential problem to be investigated, or the place under investigation, is such that a FRM, FEM, or ARM instrument meeting the siting requirements of 40 CFR part 58, appendix E is not the only suitable measurement system, and may not even be a preferred way to measure. For example, there are many commercially available $PM_{2.5}$ monitors that lack FRM, FEM, or ARM status that nevertheless would be suitable for an initial study of $PM_{2.5}$ concentrations in an unmonitored area of interest. In some other cases, 2 years may be sufficient to achieve the study objectives. Finally, under the 1997 rule (see statement at 71 FR 2719 and section 2.8.1.2.3 of appendix D to part 58 of the 1997 rule),[12] a SPM that is not population-oriented may not be used in comparisons to the $PM_{2.5}$ NAAQS; this may be the situation in some studies focusing on near-source impacts as well as in some studies of transport of air pollution from rural upwind areas. If the Regional Administrator has approved alternative quality assurance practices in place of the requirements of appendix A, the data from the affected SPM are not eligible for comparison to the relevant NAAQS.

In reviewing comments about SPMs, EPA noticed that the proposed rule text for 40 CFR 58.11(d) implied that all SPMs using FRM, FEM, or ARM methods must meet appendix E siting requirements. This was not our intention, as the study objective for a SPM may require it to be located inconsistently with appendix E requirements. The implied restriction in 40 CFR 58.11(d) as proposed conflicted with an explicit statement to the contrary in 40 CFR 58.20(b) as proposed. Removing this implication is certainly in keeping with the sense of most SPM-related comments, which supported flexibility for States to operate SPMs as they choose. The promulgated version of 40 CFR 58.11(d) is drafted so as to remove this implied restriction. Data from a SPM not sited consistently with appendix E are not eligible for comparison to the respective NAAQS, unless the State has requested and EPA has approved a waiver of these criteria.

In the course of considering all the public comments on SPMs, EPA realized that the proposed restriction on designating pre-existing SLAMS monitors as SPMs after January 1, 2007 would have the effect of preventing a State from switching a monitor to SPM status even if EPA had approved the outright removal of that monitor under other provisions. This could be counter-productive. This final rule provides that if EPA has approved the discontinuation of a SLAMS monitor, the State may choose to retain the monitor and redesignate it to be a SPM. Such a monitor could be removed later without further EPA approval.

9. Special Considerations for Data Comparisons to the National Ambient Air Quality Standards

By way of background, the preamble to the proposed monitoring rule provided an explanation of when and how monitoring data are considered comparable to the respective NAAQS under existing rules and EPA policies. See 71 FR 2719–20. The EPA also proposed to relocate one of the provisions mentioned in the discussion, proposing to move pre-existing $PM_{2.5}$ rule language currently found in section 2.8.1.2.3 of appendix D to 40 CFR 58.30 of subpart D without substantive change. This relocation would provide a more prominent rule location for monitoring requirements detailing the comparability of ambient data to the $PM_{2.5}$ NAAQS. See 71 FR 2782. One commenter objected, not to this proposed rearrangement of rule language, but rather to the underlying existing (1997) requirement that $PM_{2.5}$ sites must be population-oriented to be comparable to the $PM_{2.5}$ NAAQS. This commenter stated that EPA had failed to justify any benchmark for defining an area as population-oriented. Another commenter challenged whether EPA had provided an adequate public health basis for this provision.

The EPA considers these comments to be outside the scope of the proposal. EPA noted in the preamble to the monitoring proposal that some existing regulatory language was being reprinted without change and that such reprinting was done solely for the readers' convenience to aid in viewing the proposal in a single context (71 FR 2712). EPA also stated that all of the background description of existing regulatory provisions—including the provision the commenters challenged—was presented not to reexamine any of the background provisions but rather ''to facilitate informed public comment'' on certain aspects of the proposal other than these background provisions. These other provisions were ''requirements for the proposed $PM_{10-2.5}$ NAAQS'', ''provisions for special purpose monitors'', provisions ''related to the required spacing between ozone monitors and roadways'', and ''certain quality assurance requirements'' (71 FR at 2719). EPA thus did not seek comment on, reconsider, or otherwise reopen the pre-existing provision regarding population-oriented $PM_{2.5}$ monitors (or any of the other provisions recited in the background section). The EPA notes, however, that the pre-existing rule and this final rule do provide the same definition of population-oriented, in 40 CFR 58.1 Definitions, which while not quantified in terms of population affected has served to guide $PM_{2.5}$ monitor placement and interpretation of monitoring data since 1997.

The most controversial portion of this part of the proposal dealt with issues pertaining to the proposed NAAQS for

[12] EPA is recodifying this provision in section 58.30 of the final monitoring rule, but is not reconsidering or otherwise reevaluating it.

$PM_{10-2.5}$. The EPA proposed a new five-part suitability test for the comparison of $PM_{10-2.5}$ data to the proposed qualified $PM_{10-2.5}$ indicator. This test included an urbanized area population criterion, a block group population density criterion, a requirement for sites to be population oriented, an exclusion for source-influenced microscale sites, and a site-specific assessment to insure that data were dominated by certain sources of concern. See 71 FR 2736–2738. The EPA received extensive comment on the proposed $PM_{10-2.5}$ qualified indicator and on the proposed $PM_{10-2.5}$ NAAQS five-part site-suitability test. These issues are now moot since EPA is not adopting a NAAQS using a $PM_{10-2.5}$ indicator. See also section III.C of the preamble to the final rule adopting revisions to the PM NAAQS which explains why EPA did not adopt the proposed qualified indicator for thoracic coarse particles and why the proposed monitoring suitability criteria proved to be inappropriate.

C. Appendix A—Quality Assurance Requirements for State and Local Air Monitoring Stations and Prevention of Significant Deterioration Air Monitoring

A quality system provides a framework for planning, implementing and assessing work performed by an organization and for carrying out required quality assurance (QA) and quality control (QC) activities. The proposed amendments to 40 CFR part 58, appendix A were intended to provide the requirements necessary to develop quality systems for monitoring the pollutants of SO_2, NO_2, O_3, CO, $PM_{2.5}$, PM_{10} and $PM_{10-2.5}$ at SLAMS stations including NCore stations, PAMS, and Prevention of Significant Deterioration (PSD) networks, and SPM stations using FRM, FEM, or ARM monitors. The proposed revisions addressed responsibilities for implementing the quality system for EPA and monitoring organizations. They also addressed adherence to EPA's QA policy, DQOs, and the minimum QC requirements and performance evaluations needed to assess the data quality indicators of precision, bias, detectability, and completeness. In addition, the proposed amendments described the required frequency of the QC requirements and performance evaluations, the data to be collected, and the statistical calculations for estimates of the data quality indicators at various levels of aggregation. The revised statistical calculations would be used to determine attainment of the DQOs. The proposed amendments also addressed required auditing programs to help determine and ensure data quality comparability across individual monitoring programs.

The EPA received some comments expressing concerns about the funding of the quality system. Funding issues are addressed in section III.E of this preamble. Substantive and procedural issues are addressed here.

1. General Quality Assurance Requirements

The EPA proposed to revise or include a number of general QA provisions that would serve to consolidate information and to ensure conformance to the QA requirements specified in EPA Order 5360.1 A2.

The EPA proposed to consolidate the QA requirements for SLAMS and PSD stations from two separate appendices, 40 CFR part 58, appendices A and B, into one single appendix A because both programs have similar QA requirements. See 71 FR 2725. The EPA received only endorsements on the proposed consolidation and therefore this final rule consolidates these appendices.

The EPA proposed to revise the part 58 appendix A to conform to the current EPA Quality Assurance Policies in EPA Order 5360.1 A2 which requires agencies that accept Federal grant funding for their air monitoring programs to have a QA program with certain elements including quality management plans (QMPs), quality assurance project plans (QAPPs), and the identification of a QA management function. EPA received three sets of comments endorsing the revision and received one comment expressing concern about the identification of the QA manager function. See 71 FR 2725. The proposed regulation would not have required that monitoring organizations identify a QA manager but would have required that they provide for a QA management function, which provides for independent oversight of the ambient air monitoring quality system. The EPA feels that the proposed language captures the essence of the requirements in EPA Order 5360.1A2, while accommodating the diverse nature of the ambient air monitoring community which is made up of large and small (local and Tribal) organizations. Consistent with the majority of positive feedback, and the need for conformance to the EPA Order, this final rule matches the proposed rule on this point.

The EPA proposed to revise the QA program by emphasizing the DQO process. See 71 FR 2725. A DQO is a qualitative and quantitative statement that defines the appropriate quality of data needed for a particular decision—for example, the data quality necessary for EPA or a monitoring organization to make data comparisons against the NAAQS. The DQOs help to establish the requirements for the data quality indicators of precision, bias, completeness, and detectability and the rationale for the acceptance criteria for these indicators. The EPA received a number of endorsements on this approach and did not receive negative comments. This final rule matches the proposed rule.

2. Specific Requirements for $PM_{10-2.5}$, $PM_{2.5}$, PM_{10} and Total Suspended Particulates

The EPA proposed to revise some of the $PM_{2.5}$ and PM_{10} QA requirements in an attempt to provide consistency in implementation and assessment. Since $PM_{10-2.5}$ monitoring was proposed to be required, EPA included similar QA requirements for this monitoring. These requirements included the implementation of flow rate audits conducted by the monitoring organization, collocated monitoring, and performance evaluations.

The EPA proposed to make all the requirements for flow rate verifications and audits consistent among the $PM_{10-2.5}$, $PM_{2.5}$, and PM_{10} methods. See 71 FR 2728. This requirement would have increased the audit frequency for PM_{10} monitoring and decreased the audit frequency for $PM_{2.5}$ monitoring. Most commenters endorsed the proposed approach but a few commenters voiced concerns regarding the increased frequency for high-volume samplers for PM_{10} and total suspended particulates (TSP) which operate somewhat differently and are not as easy to audit. The EPA reviewed the comments and revised the flowrate verification requirement from monthly to quarterly for the hi-volume manual instruments sampling for PM_{10} and TSP only.

The EPA proposed to revise the sampling frequency for the implementation of the $PM_{2.5}$ Performance Evaluation Program (PEP). See 71 FR 2726. This proposed approach, based on historical $PM_{2.5}$ precision and bias data, identified the minimum number of performance evaluations required for all primary quality assurance organizations to provide an adequate assessment of bias, rather than the current requirement that a uniform 25 percent of monitors in a primary quality assurance organization be evaluated each year. The revision would establish a suitable sampling frequency of five valid audits a year for organizations with less than or equal to five monitoring sites and eight valid

audits a year for those organizations with greater than five monitoring sites. The majority of commenters approved of the PEP reduction frequency. A few commenters suggested that some primary quality assurance organizations do not need to be audited and said PEP audits should only focus on those producing inferior results. The EPA disagrees with this comment and believes that because the PEP program needs to provide a periodic estimate of bias for each primary quality assurance organization, the program must be implemented at each primary quality assurance organization.

There was also a comment suggesting further reductions to the auditing frequency or requiring the same number of audits over a longer period of time. The proposed audit cycle is based on 3 years since that is how many years of data are collected for comparison the $PM_{2.5}$ NAAQS. Therefore, the audit cycle frequency was based on the number of audit values needed to provide EPA the confidence in our bias estimates at the primary quality assurance organization over a 3 year period. Therefore, this final rule matches the proposed rule.

The EPA proposed to reduce the lower ends of concentration limits for which collocated data can be used to provide precision estimates. See 71 FR 2727. The lower ends of concentration limits would be reduced from 6 micrograms per cubic meter (μ/m^3) to 3 μ/m^3 for $PM_{2.5}$ and PM_{10c} (low-volume samplers) and from 20 μ/m^3 to 15 μ/m^3 for PM_{10} (high-volume samplers). Statistical evaluation of 3 years of $PM_{2.5}$ and PM_{10} data revealed comparable estimates of precision using data from both of these reduced concentration ranges, and also revealed that the addition of the data at these lower ranges will increase the level of confidence in the precision estimates. The majority of commenters endorsed the approach but there were a few commenters who were concerned that the lower concentrations, based on the statistics used to estimate precision, might lead to greater imprecision estimates. The evaluation that EPA made with the data from these lower concentrations included did not show any major increase in imprecision compared to omitting those data.[13] Since EPA has proposed the use of target upper confidence limits for statistical assessments and an upper confidence limit is influenced by sample size, lowering the concentration values tends to tighten or lower the confidence limits because more data points are available in the sample and therefore offsets any greater variability that might be associated with lower concentrations. Therefore this final rule matches the proposed rule.

Based upon the decision that there is no need to implement a $PM_{10-2.5}$ monitoring program broad enough to systematically determine attainment/nonattainment with a $PM_{10-2.5}$ NAAQS, EPA has modified the proposed $PM_{10-2.5}$ collocation precision requirement and the Performance Evaluation Program (PEP) requirements in this final rule. See 71 FR 2726. The proposed quality system for $PM_{10-2.5}$ was developed for NAAQS comparison purposes and would have provided reliable precision and bias estimates at the primary quality assurance organization level of aggregation. However, EPA is not adopting a NAAQS using a $PM_{10-2.5}$ indicator at this time, so EPA is now requiring a network of $PM_{10-2.5}$ monitors only at NCore stations. The goal of these monitors will be to improve our understanding of $PM_{10-2.5}$, support health studies for future reviews of the NAAQS, and promote improvements in the monitoring technology. States may choose to operate additional $PM_{10-2.5}$ monitors. With this in mind, the quality system need not be focused on the data quality assessments at the primary quality assurance organization level of aggregation but rather can and should be focused on understanding and controlling the data quality of each of the methods used to collect $PM_{10-2.5}$. Also, since it is now anticipated that a primary quality assurance organization would have very few $PM_{10-2.5}$ sites, the proposal, if adopted without change, would have required almost every NCore site to have a collocated second $PM_{10-2.5}$ monitor, and the proposal would not provide for assessment of FEM precision even if FEMs are approved and deployed in place of some or most FRMs since as proposed the first collocation requirement of an FEM in a primary quality assurance organization would always be with a FRM. To avoid these undesirable outcomes, this final rule requires fewer collocated samplers than the proposal would have. Under this final rule, EPA will ensure that collocated sampling for estimating precision be implemented at 15 percent of FRMs (all FRMs aggregated) and 15 percent of the FEMs of each method designation. The number of collocated sites would thus be based on the size of the final $PM_{10-2.5}$ network. In order to provide a distribution of collocation across the United States, EPA will require, at a minimum, one collocated site in each EPA Region. The Regional Administrator shall select the sites for collocation. The site selection process will also consider selecting States with more than one $PM_{10-2.5}$ site to have one or two of the required collocations and will aim for an appropriate distribution among rural and urban sites.

For the PEP, this final rule departs from the proposal by requiring only one PEP audit at one $PM_{10-2.5}$ site in each primary quality assurance organization each year. The proposed rule would have required five or eight PEP audits for $PM_{10-2.5}$ in each organization. See 71 FR 2787, 2788. Since the PEP is already being run, at present, for the $PM_{2.5}$ network and it is expected that the $PM_{10-2.5}$ FRMs will utilize the same FRMs as the $PM_{2.5}$ samplers, the PEP audit for the $PM_{10-2.5}$ site can count towards the required number of PEP audits for $PM_{2.5}$ sites. It will be necessary to place a PM_{10c} PEP sampler at the NCore site also but, this incremental requirement will not be a significant additional resource burden. When and if FEMs are implemented at some $PM_{10-2.5}$ sites, the PEP audit will be an additional audit at those particular sites and will require additional resources for auditing.

The incremental cost of placing and operating $PM_{10-2.5}$ samplers for purposes of tracking precision will also be minor in most cases. Many of the primary quality assurance organizations that will implement the $PM_{10-2.5}$ monitor at NCore sites are required to implement $PM_{2.5}$ and PM_{10} networks. Some or most of the initial $PM_{10-2.5}$ deployments will be with manual FRM instruments, similar to the instruments used in the $PM_{2.5}$ networks and to some of the instruments used in the PM_{10} networks. The EPA will allow collocated $PM_{10-2.5}$ monitors to be included in the primary quality assurance organization's count for required $PM_{2.5}$ and PM_{10} collocation. In most cases, the primary quality assurance organization's collocation requirements for FRMs will not increase overall, since it is not anticipated that any one primary quality assurance organization will have many additional $PM_{10-2.5}$ sites that are not already both $PM_{2.5}$ and PM_{10} sites. The only restriction to this aggregated collocation count will be for monitoring organizations that are operating high-volume PM_{10} samplers. Since the PM_{10c} monitor in a $PM_{10-2.5}$ FRM will be a low-volume sampler, PM_{10} high-volume and PM_{10} low-volume samplers cannot be aggregated together in the collocation

[13] "Proposal to Change $PM_{2.5}$ and PM_{10} Collocation Sampling Frequency Requriements," Mike Papp and Louise Camalier; November 2005. *http://www.epa.gov/ttn/amtic/pmgainf.html.*

count and at least one collocated monitor must be identified for each type within primary quality assurance organization. Therefore, it is expected that the 15 percent collocation requirement for $PM_{10-2.5}$ FRMs will not actually increase the overall collocation burden at the majority of the primary quality assurance organizations beyond what they would have been required to implement for their PM_{10} and $PM_{2.5}$ networks.

For any FEMs that might be used at $PM_{10-2.5}$ sites, EPA will require 15 percent collocation of each method designation or at least two collocations within each method designation. The EPA will require two collocations in order to collocate one FEM instrument with the same method designation to provide estimates of within method precision and collocate a second with an FRM to provide for an estimate of bias. These collocations would not necessarily need to be at separate monitoring sites.

3. Particulate Matter Performance Evaluation Program and National Performance Audit Programs

The EPA proposed to revise the current regulatory requirements dealing with responsibilities for independent assessments of monitoring system performance. See 71 FR 2726. These evaluations are the subject of sections 2.4 and 3.5.3.1 of the existing (1997) appendix A to 40 CFR part 58. Section 2.4 of appendix A to 40 CFR part 58 applied to all NAAQS pollutants and section 3.5.3.1 applied only to $PM_{2.5}$.

The EPA proposed to revise the text of 40 CFR part 58, appendix A to cover $PM_{10-2.5}$ and also to clarify that it is the responsibility of each monitoring organization to make arrangements for, and to provide any necessary funding for, the conduct of adequate independent performance evaluations of all its FRM or FEM criteria pollutant monitors. The proposed language also clearly indicates that it is the monitoring organization's choice whether to obtain its independent performance evaluations through EPA's National Performance Audit Program (NPAP) and $PM_{2.5}$ PEP programs, or from some other independent organization. An independent organization could be another unit of the same agency that is sufficiently separated in terms of organizational reporting and which can provide for independent filter weighing and performance evaluation auditing. The proposed approach would ensure that adequate and independent audits are performed and would provide flexibility in the implementation approach.

Monitoring organizations that choose to comply with the revised provisions of appendix A to 40 CFR part 58 regarding performance evaluations by relying on EPA audits, for $PM_{2.5}$, $PM_{10-2.5}$, and/or other NAAQS pollutants, would be required to agree that EPA hold back part of the grant funds they would otherwise receive directly. These funds would be used by EPA to hire contractors to perform the audits and to purchase expendable supplies. To ensure national consistency and effective audits, EPA included provisions to ensure certification of data comparability for audit services not provided by EPA and for traceability of gases and other audit standards to national standards maintained by the National Institute for Standards and Technology.

The EPA received a broad range of comments on this proposed revision. The EPA received a few comments in support of these programs and one commenter felt that the PEP audits should be increased. In general, the comments expressing concern with the proposed language did not suggest that these programs were not necessary but were concerned about some technical aspects of the programs or with funding implications. Funding issues are addressed in section III.E of this preamble.

The EPA received a number of comments expressing concerns that allowing the monitoring agencies to implement the audit programs themselves or through third parties would increase the variability in the performance evaluation data. Since one of the major goals in the historically centralized and federally implemented PEP and NPAP programs has been the evaluation of data comparability, EPA is also concerned about any additional variability and its effect on data comparability. It has been EPA's practice with regard to any State which already performs these audits to perform side-by-side comparisons of EPA's equipment and procedures and the State's procedures to ensure both are producing results of acceptable quality. The EPA has successfully performed these comparisons with the California Air Resources Board's audit system. These comparisons will be expanded to include any additional States which choose to perform audits themselves or through third parties, rather than ask EPA to do so. During the comment period, EPA asked the monitoring organizations whether or not, assuming finalization of the proposed rule changes, they would continue to use the federally implemented program or perform the audits itself. For 2007, only three monitoring organizations (besides the one already implementing NPAP) opted to implement the NPAP and three monitoring organizations (besides the two already implementing PEP) opted to implement the PEP. The EPA believes it has the capability to ensure these State will implement programs will produce data of a quality comparable to the Federally implemented program.

The EPA also received comments stating concerns about the stringency of the definition of adequate and independent. Adequacy refers to the number of audits administered at any primary quality assurance organization and the technical procedures used in the audits. This final rule does not require any additional adequacy requirements above and beyond what EPA currently implements for the federally implemented program. The EPA evaluates data quality at the aggregation called ''reporting organization'' (which was changed to ''primary quality assurance organization'' in the proposal). The EPA feels that it needs to collect enough data to be able to judge data quality within each primary quality assurance organization over the same period that it uses the data for comparison to the NAAQS (3 years).

In the case of the PEP for $PM_{2.5}$, today's action requires five audits per year for organizations with five or fewer sites and eight audits for those organizations with greater than five sites, the same as proposed. The number of audits aggregated over three years provides a reasonable estimate of bias at a primary quality assurance organization within an acceptable level of confidence. For the NPAP program addressing NAAQS for CO, SO_2, Pb, and NO_2, the goal is to perform audits on about 20 percent of the sites each year, but since there may be a number of high priority sites within a primary quality assurance organization that should be audited more often, it is anticipated that NPAP might audit each site within a primary quality assurance organization over about 7 to 8 years. This 20 percent goal is the current EPA practice, but was not proposed to be required by rule and, therefore, does not appear in this final rule.

There were a few comments suggesting that some primary quality assurance organizations do not need to be audited and that EPA mandatory audits for CO, SO_2, Pb, and NO_2 should only focus on those organizations producing inferior results. The EPA continues to believe that it is important to develop an estimate of bias for each primary quality assurance organization. To do this, the audit program must be

implemented at each primary quality assurance organization. The NPAP audits using a through-the-probe approach, which is generally not how audits are performed by the primary quality assurance organizations themselves. By auditing some stations within a primary quality assurance organization each year using the through-the-probe approach, the NPAP can identify problems which the organization may not be aware of on its own. Also, EPA continues to believe that it is necessary to provide an adequate assessment of data comparability of all primary quality assurance organizations every year.

There were also comments concerning the requirement to use independent filter weighing laboratories for the implementation of the PEP. When EPA first implemented the PEP program, EPA established two independent laboratories to weigh filters for the PEP audits. Due to program efficiencies, EPA is now using one filter weighing laboratory. If primary quality assurance organizations implement the PEP themselves, they should not be able to utilize the same laboratory in which they weigh their routine sampler filters since any bias or contamination that might occur at the routine lab will also be ''passed on'' to the PEP filter. Because the PEP provides an estimate of bias (systematic error), it is necessary to avoid having a systematic bias occurring in the routine filter weighing lab affect both the PEP filters and the routine filters. Primary quality assurance organizations interested in implementing the PEP themselves have the option to make arrangements with other State labs, contractor labs, or utilize the PEP national lab.

The EPA believes that both the NPAP and PEP programs serve as an integral part of the overall ambient air monitoring program quality system and provide EPA and the public with independent and objective assessments of data quality and data comparability. Both programs provide the only quantitative independent assessments of data quality at a national level. Therefore, the proposed language was not changed and this final rule matches the proposed rule.

4. Revisions to Precision and Bias Statistics

The EPA proposed to change the statistics for assessment of precision and bias for criteria pollutants. See 71 FR 2727. Two important data quality indicators that are needed to assess the achievement of DQOs are bias and precision. Statistics in the current requirements of 40 CFR part 58, appendix A (with the exception of $PM_{2.5}$) combine precision and bias together into a probability limit at the primary quality assurance organization level of aggregation. Since the standard EPA DQO process uses separate estimates of precision and bias, EPA examined separated assessment methods that were statistically reasonable and simple.

For SO_2, NO_2, CO, and O_3, EPA proposed to estimate precision and bias on confidence intervals at the site level of data aggregation rather than the primary quality assurance organization. Estimates at the site level can be accomplished with the automated methods for SO_2, NO_2, CO, and O_3 because there is sufficient QC information collected at the site level to perform adequate assessments.

The precision and bias statistics for PM measurements (PM_{10}, $PM_{10-2.5}$ and $PM_{2.5}$) are generated at a primary quality assurance organization level because, unlike the gaseous pollutants, due to costs only a percentage of the sites have precision and bias checks performed in any year and only a few times per year. As with the gaseous pollutants, the statistics would use the confidence limit approach. Using a consistent set of statistics simplifies the procedures.

The EPA also proposed to change the precision and bias statistics for Pb to provide a framework for developing and assessing a DQO. See 71 FR 2727. The QC checks for Pb come in three forms: Flow rate audits, Pb audit strips, and collocation. The EPA proposed to combine information from the flow rate audits and the Pb audit strips to provide an estimate of bias. Precision estimates would still be made using collocated sampling but the estimates would be based on the upper 95 percent confidence limit of the coefficient of variation, similar to the method described for the automated instruments for SO_2, NO_2, CO, and O_3.

The EPA received only positive comments on the proposed statistics and some typographical corrections. This final rule matches the proposed rule.

5. Other Program Updates

The EPA proposed several QA program changes to update the existing requirements in 40 CFR part 58 to reflect current program needs and terminology.

The EPA proposed to remove SO_2 and NO_2 manual audit checks. A review of all SLAMS/NAMS/PAMS sites by monitor type revealed that no monitoring organizations are using manual SO_2 or NO_2 methods, nor are any monitoring organizations expected to use these older technologies. The EPA received only comments endorsing the removal of the manual audit checks. Therefore, this final rule matches the proposed rule.

The EPA proposed to change the concentration ranges for QC checks and annual audit concentrations. The one-point QC check concentration ranges for the gaseous pollutants SO_2, NO_2, O_3, and CO were expanded to include lower concentrations. Lower audit ranges were added to concentration ranges for the annual audits. Adding or expanding the required range to lower concentration ranges was appropriate due to the lower measured concentrations at many monitoring sites as well as the potential for NCore stations to monitor areas where concentrations are at trace ranges. In addition, EPA proposed that the selection of QC check gas concentration must reflect the routine concentrations normally measured at sites within the monitoring network in order to appropriately estimate the precision and bias at these routine concentration ranges. The majority of the comments EPA received on this proposal were positive but EPA received comments that asked for more guidance on how a monitoring organization would choose the appropriate audit ranges. The EPA would like to provide as much flexibility as possible for the monitoring organization to use their local knowledge of their monitoring sites to choose their audit concentration ranges. Accordingly, in this final rule, section 3.2.2.1 of appendix A to part 58 establishes a non-binding goal that the primary quality assurance organization select the three audit concentration ranges which bracket 80 percent of the routine monitoring concentrations at the site. So in general, with some minor modification to address comments, this final rule matches the proposed rule.

The EPA proposed to revise the PM_{10} collocation requirement. See 71 FR 2726. Fifteen percent of all $PM_{2.5}$ sites are required to maintain collocated samplers. For PM_{10}, the collocated requirements in the existing (1997) regulation were three alternative values based on the number of routine monitors within a primary quality assurance organization. For consistency, the proposed amendments would have changed the PM_{10} collocation requirement to match the $PM_{2.5}$ requirement. This proposed change would make the collocation requirement consistent for $PM_{2.5}$ and PM_{10}. The EPA did not receive any comments on this proposed change. Therefore, this final rule matches the proposed rule.

The EPA proposed to revise the requirements for $PM_{2.5}$ flow rate audits.

See 71 FR 2728. Based on an evaluation of flow rate data and discussions within the QA Strategy Workgroup,[14] EPA proposed to reduce the frequency of flow rate audits from quarterly to semiannually and to remove the alternative method which allows for obtaining the precision check from the analyzers internal flow meter without the use of an external flow rate transfer standard. Most monitoring organizations participating in the QA Strategy Workgroup considered auditing with an external transfer standard to be the preferred method and believed that the quarterly audit data demonstrated the instruments were sufficiently stable to reduce the audit frequency. The EPA did not receive any comments on this proposal; therefore, this final rule matches the proposed rule.

D. Appendix C—Ambient Air Quality Monitoring Methodology

1. Applicability of Federal Reference Methods and Federal Equivalent Methods

The EPA proposed that monitoring methods used in the multipollutant NCore, SLAMS, and PAMS networks were required to be FRMs, FEMs, ARMs, or where appropriate, other methods designed to meet the DQOs of the network being deployed. See 71 FR 2731. Specifics on the monitoring methods proposed for use at each type of site are described below.

The EPA proposed that NCore multipollutant stations must use FRMs or FEMs for criteria pollutants when the expected concentration of the pollutants was at or near the level of the NAAQS. For criteria pollutant measurements of CO and SO_2, where the level of the pollutant is well below the NAAQS, EPA observed that it may be more appropriate to operate higher sensitivity monitors than typical FRM or FEM instruments. See 71 FR 2728. In these cases, higher sensitivity methods were expected to support additional monitoring objectives that conventional FRMs or FEMs cannot. In some cases, higher-sensitivity gas monitors have also been approved as FEM and can serve both NAAQS and other monitoring objectives. Options for high-sensitivity measurements of CO, SO_2, and total reactive nitrogen (NO_y) are described in the report, ''Technical Assistance Document for Precursor Gas Measurements in the NCore Multipollutant Monitoring Network.'' Comments regarding monitoring methods used at NCore stations are addressed in section V.E.1 of this preamble.

The EPA proposed that SLAMS use FRMs or FEMs for criteria pollutants. See 71 FR 2728. The EPA also proposed that these sites have the additional option of using ARMs for $PM_{2.5}$. Approved regional methods are described in section V.D.2 of this preamble.

Photochemical assessment monitoring stations (PAMS) were proposed to be required to use FRM or FEM monitors for O_3, with most expected to use the O_3 ultraviolet photometry FEM and the nitric oxide (NO) and NO_2 chemiluminescence FRM for criteria pollutant measurements. See 71 FR 2728. Methods for volatile organic compounds (VOC) including carbonyls, additional measurements of gaseous nitrogen, such as NO_y, and meteorological measurements are routinely operated at PAMS. Because these measurements are not of criteria pollutants, the methods were not subject to the requirements for reference or equivalent methods. However, these methods were described in detail in the report, ''Technical Assistance Document (TAD) for Sampling and Analysis of Ozone Precursors.'' [15]

The EPA proposed that SPM sites have no restrictions on the type of method to be utilized. While FRM and FEM can be employed at SPM sites, other methods, not limited to continuous, high-sensitivity, and passive methods, may also be utilized. Because the SPM provision was designed to encourage monitoring, agencies could design SPM sites with methods to meet monitoring objectives that may not be achievable with FRMs or FEMs. Additional information on SPMs is included in section V.E.8 of this preamble.

The EPA received several comments on its proposed approach for ambient air monitoring methodology. Some of these comments expressed concern that requiring only designated reference or equivalent methods takes away flexibility and the drive for improvements to air quality instrumentation. The EPA agrees that some flexibility is desirable for agencies to use innovative methods that can support other objectives beyond NAAQS decision making. However, CAA section 319 requires ''* * * an air quality monitoring system throughout the U.S. which utilizes uniform air quality monitoring criteria and methodology * * *''. The EPA recognizes that there may be occasions when a unique method is better suited to meet a specific monitoring objective that is different from NAAQS decision making. In these cases, EPA will allow for these innovative methods, so long as the monitoring agency is not attempting to use them to meet minimum requirements for the number of monitors for a given criteria pollutant. For example, a low cost method might be applied as a SPM to provide short term data for validation of an air quality model.

2. Approved Regional Methods for $PM_{2.5}$

The EPA proposed amendments that expanded the allowed use of alternative $PM_{2.5}$ measurement methods through ARMs. See 71 FR 2729. The EPA also proposed to extend the existing provisions for approval of a nondesignated $PM_{2.5}$ method as a substitute for a FRM or FEM at a specific individual site to a network of sites. This approval would be extended on a network basis to allow for flexibility in operating a hybrid network of $PM_{2.5}$ FRM and continuous monitors. The size of the network, in which the ARM could be approved, would be based on the location of test sites operated during the testing of the candidate ARM. The proposed amendments would have required that test sites be located in urban and rural locations that characterize a wide range of aerosols expected across the network. A hybrid network of monitors was envisioned to address monitoring objectives beyond just determining compliance with NAAQS. The hybrid network was expected to lead to a reduced number of existing FRM samplers and an increase in continuous ARM samplers that would all be approved for direct comparison with the applicable forms of the $PM_{2.5}$ NAAQS.

Many comments were received on EPA's proposal regarding ARMs for $PM_{2.5}$. Several commenters suggested requiring on-going collocation with an FRM. Commenters also raised concerns about ensuring data quality, especially in light of the lower level of the 24-hour $PM_{2.5}$ NAAQS and therefore the perceived need to ensure that the statistical criteria are met in each season. One commenter was so concerned about the data quality issues that the commenter recommended dropping the ARM provision. Other commenters voiced strong support for the ARM provision, but also recommended that EPA allow for less collocation with FRMs than the 30

[14] The QA Strategy Workgroup consists of EPA, State, and local staff responsible for monitoring quality assurance activities who meet informally to exchange information on current monitoring issues.

[15] Technical Assistance Document (TAD) for Sampling and Analysis of Ozone Precursors. U.S. Environmental Protection Agency. Human Exposure and Atmospheric Sciences Division. EPA/600–R–98/161. September 1998. Available at: *http://www.epa.gov/ttn/amtic/pams.html.*

percent that was proposed. Several commenters recommended that EPA allow non-linear data adjustment factors as are used for AIRNow and mapping purposes.

In reviewing comments on the provision for ARMs, EPA agrees that data quality issues need to be appropriately addressed. Since ARMs will be used for several monitoring objectives, including NAAQS attainment/nonattainment determinations, they must meet the Class III FEM performance criteria set out in part 53. However, as proposed, these performance criteria left open the possibility that in cleaner environments where concentration data approached background levels of $PM_{2.5}$ that approved methods may have unacceptable levels of bias to meet other monitoring objectives. Therefore, the Class III equivalency criteria, which are the same criteria used for $PM_{2.5}$ ARMs, has been strengthened to address concerns about additive bias in cleaner environments. The EPA performed an extensive investigation into developing equivalency criteria for $PM_{2.5}$ continuous methods. One of the conclusions from that process was that continuous methods, by virtue of being able to provide a sample every day, generate data with more certainty in decision making than methods used with lower sample frequencies (i.e., a 1-in-3 day sample schedule), with all other factors being equal. Although biases can be seasonal, correlation combined with the other performance criteria will guard against high biases in one season cancelling out low biases in another. Together, the performance criteria and the daily sample schedule will ensure that data quality objectives are met when making NAAQS decisions with data from ARMs.

With respect to requiring on-going collocation with FRMs at 30 percent of the sites with continuous $PM_{2.5}$ monitors, EPA has considered how this would affect agencies with many continuous monitors and finds it unnecessary to require such a large absolute number of collocated sites, although the number of collocated FRM under a 30 percent collocation requirement makes sense for smaller networks. Therefore, this final rule states that monitoring agencies are only required to have 30 percent collocation of the ARMs they count towards the applicable minimum number of required FRM/FEM/ARM sites—rounded up, rather than 30 percent of their full networks of ARMs.

For the issue of non-linear data transformations, this final rule specifically allows data transformations when using an ARM, including non-linear ones, so long as the transformations are described in both the ARM application and the monitoring agency's quality assurance project plan (or addendum to the QAPP), the transformations are prospective, and the ARM application provides for details on how often or under what circumstances they will be recalculated, based on what data, and which analytical method.

Since participation in seeking approval of ARMs is voluntary and approval of an ARM applies only in the territory of the agency seeking approval, no monitoring agency having concerns will be required to utilize the ARM provisions. However, for many agencies this approach will offer an opportunity to improve their monitoring network's utility, by using methods that can serve multiple objectives, while having lower costs. Therefore, EPA is finalizing the ARM provisions as proposed, with the exceptions of the additive bias requirement being strengthened; changes to the required collocation requirement; and clarifying use of data transformations, including non-linear ones.

Today's final action thus allows State, local, and Tribal monitoring agencies to independently, or in cooperation with instrument manufacturers, seek approval of ARMs where $PM_{2.5}$ continuous monitor data quality is sufficiently comparable to FRMs for integration into the agency's $PM_{2.5}$ network used in NAAQS attainment findings. The performance criteria for approval of candidate ARMs are the same criteria for precision, correlation, and additive and multiplicative bias that have been finalized for approval of continuous $PM_{2.5}$ Class III equivalent methods, described in section IV.C of this preamble. These performance criteria are to be demonstrated by monitoring agencies independently or in cooperation with instrument manufacturers under actual operational conditions using one to two FRM and one to two candidate monitors each. This is a departure from the very tightly-controlled approach used for national equivalency demonstration in which three FRM and three candidate monitors are operated. The ARM will be validated periodically in recognition of changing aerosol composition and instrument performance. These validations will be performed on at least two levels: (1) Through yearly assessments of data quality provided for as part of the on-going quality assurance (QA) requirements in 40 CFR part 58, appendix A, and (2) through network assessments conducted at least every 5 years as described in section V.B.2 of this preamble.

The testing criteria EPA will use for approval of $PM_{2.5}$ continuous methods as ARMs are intended to be robust but not overly burdensome. The two main features of testing that are different than FEMs are the duration and locations of testing. The duration is expected to be 1 year to provide an understanding of the quality of the data on a seasonal basis. The locations for testing are expected to be a subset of sites in a network where the State desires the $PM_{2.5}$ continuous monitor to be approved as an ARM. Testing will be carried out in multiple locations to include up to two Core-based Statistical Area/Combined Statistical Areas (CBSA/CSA) and one rural area or small city for a new method. For methods that have already been approved by EPA in other networks, one CBSA/CSA and one rural area or small city are required to be tested.

To ensure that approvals of new methods are made consistently on a national basis, the procedures for approval of methods are similar to the requirements specified in 40 CFR part 53, i.e., the EPA Administrator (or delegated official) will approve the application. However, to optimize flexibility in the approval process, all other monitoring agencies seeking approval of an ARM that is already approved in another agency's monitoring network can seek approval through their EPA Regional Administrator. This approach will provide a streamlined approval process, as well as an incentive for consistency in selection and operation of $PM_{2.5}$ continuous monitors across various monitoring agency networks.

The QA requirements for approval of continuous $PM_{2.5}$ ARM at a network of sites are the same as for FEM in 40 CFR part 58, appendix A, except that 30 percent—rounded up—of the required sites that utilize a $PM_{2.5}$ ARM would be collocated with an FRM and required to operate at a sample frequency of at least a 1-in-6 day schedule. The higher collocation requirement would support the main goal of the particulate matter continuous monitoring implementation plan, which was to have an optimized FRM and $PM_{2.5}$ continuous monitoring network that can serve several monitoring objectives. This collocation requirement is necessary to retain a minimum number of FRM for continued validation of the ARM, direct comparison to NAAQS, and for long-term trends that are consistent with the historical data set archived in the AQS. The collocated sites are to be located at the highest concentration sites, starting

with one site in each of the largest population MSA in the network and working to the next highest-population MSA with the second site and so forth.

Finally, EPA reiterates that ARMs may be used to measure compliance with the $PM_{2.5}$ NAAQS. See section 50.13(b) and (c) (as published elsewhere in today's **Federal Register**) (annual and 24-hour primary and secondary standards are met when designated concentrations ''as determined in accordance with Appendix N'' are met), and Part 50 Appendix N section 1.a (for purposes of section 50.13, $PM_{2.5}$ can be measured by FRM, FEM, ''or by an Approved Regional Method (ARM) designated in accordance with part 58 of this chapter'').

E. Appendix D—Network Design Criteria for Ambient Air Quality Monitoring

1. Requirements for Operation of Multipollutant NCore Stations

The EPA proposed requirements for NCore stations applicable to States individually that would, in the aggregate, result in the deployment of a new network of multipollutant monitoring stations in approximately 60 mostly urban areas. See 71 FR 2730. In the proposal, most States would have been required to operate one urban station; however, rural stations could be substituted in States that have limited dense urban exposures. Such substitution would not change the goal of having about 20 rural NCore sites. California, Florida, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas would be required to operate one to two additional NCore stations in order to account for their unique situations. These stations, combined with about 20 multipollutant rural stations, which were not proposed to be required of specific States, would form the new NCore multipollutant network. The rural NCore stations would be negotiated using grant authority as part of an overall design of the network that is expected to leverage existing rural networks such as IMPROVE, CASTNET and, in some cases, State-operated rural sites.[16]

[16] To clarify, under the proposed rule, and this final rule, 41 States, the District of Columbia, the Virgin Islands, and Puerto Rico will be required to operate one NCore site. The other nine States will be required to operate two or three sites, for a national total of 62 to 71 required sites. Some of these required sites might be waived by EPA. The EPA anticipates, but the rule does not require that some of these sites will be rural. Counting non-required sites, the goal is a total of about 75 sites, about 20 of which will be rural.

These NCore multipollutant stations are intended to track long-term trends for accountability of emissions control programs and health assessments that contribute to ongoing reviews of the NAAQS; support development of emissions control strategies through air quality model evaluation and other observational methods; support scientific studies ranging across technological, health, and atmospheric process disciplines; and support ecosystem assessments. Of course, these stations together with the more numerous $PM_{2.5}$, PM_{10}, O_3, and other NAAQS pollutant sites would also provide data for use in attainment and nonattainment designations and for public reporting and forecasting of the AQI.

The EPA proposed that these NCore multipollutant stations be required to measure O_2; CO, SO_2, and total reactive nitrogen (NO_y) (using high-sensitivity methods, where appropriate); $PM_{2.5}$ (with both a FRM and a continuous monitor); $PM_{2.5}$ chemical speciation; $PM_{10-2.5}$ (with a continuous FEM); and meteorological parameters including temperature, wind speed, wind direction, and relative humidity. See 71 FR 2730. High-sensitivity measurements are necessary for CO, SO_2, and NO_y to adequately measure these pollutants in most air sheds for data purposes beyond NAAQS attainment determinations. For the other criteria pollutants, EPA proposed use of conventional ambient air monitoring methods.

At least one NCore station was proposed to be required in each State, unless a State determines through the network design process that a site which meets their obligation can be reasonably represented by a site in a second State, and the second State has committed to establishing and operating that site. Any State could propose modifications to these requirements for approval by the Administrator. While the proposed amendments did not specify the cities in which the States would have to place their NCore multipollutant monitoring stations, EPA anticipated that the overall result would be a network that has a diversity of locations to support the purposes listed earlier. For example, there would be sites with different levels and compositions of $PM_{2.5}$ and $PM_{10-2.5}$, allowing air quality models to be evaluated under a range of conditions.

The EPA received several comments on the proposed requirements for operating the NCore multipollutant monitoring stations. Some commenters recommended requiring additional NCore monitoring stations for better spatial coverage and to capture gradients, including specifically requiring additional rural sites. Regarding methods, a few commenters recommended not requiring the total reactive NO_y measurement, since this measurement in some but not all cases is little different from the existing NO_2 measurement by chemiluminescence, which uses the same measurement principle as NO_y.

In reviewing the comments, EPA notes that more NCore sites can be deployed than required by regulation. For example, in our proposal EPA stated that it would develop a design of the network for rural sites—not specifically required of any individual State—that leveraged existing rural networks such as IMPROVE, CASTNET and, in some cases, State-operated rural sites. In some cases it may be appropriate to have enough NCore multipollutant sites to assess gradients; however, in other areas having enough sites to develop gradients with all the parameters required of an NCore station may not be needed and would therefore present an unnecessary burden to the States. Therefore, EPA is finalizing the NCore network design requirements as proposed.

For required methods, EPA agrees that in areas where the existing NO_X method provides comparable data to the NO_y method, monitoring agencies should be allowed to operate NO_X instead of the more challenging measurement of NO_y. However, EPA notes much of the reason for NO_y and NO_X reading being so close may be a positive bias with current typical NO_X ($NO + NO_2$) instruments which may over report NO_2. Since further development of the NO_X method is underway, monitoring agencies which seek waivers for the NO_y method are encouraged to utilize high sensitivity versions of the chemiluminescence method so that they are capable of switching from high sensitivity NO_X to high sensitivity NO_y in performing gaseous nitrogen measurements. The EPA is therefore finalizing the required measurements at NCore multipollutant sites as proposed; however, EPA will allow for waivers of the NO_y method in areas where measured NO_X is expected to provide virtually the same data as NO_y. This is largely expected to be in urban environments until such time as the NO_2 method (and hence the NO_X) is sufficiently improved that having separate measurements of NO_y and NO_X provides more useful information than the existing technology. See also section V.E.7.

The NCore stations are to be deployed at sites representing as large an area of relatively uniform land use and ambient air concentrations as possible (i.e., out

of the area of influence of specific local sources, unless exposure to the local source(s) is typical of exposures across the urban area). Neighborhood-scale sites may be appropriate for NCore multipollutant monitoring stations in cases where the site is expected to be similar to many other neighborhood scale locations throughout the area. In some instances, State and local agencies may have a long-term record of several measurements at an existing location that deviates from this siting scheme. The State or local agency may propose utilizing these kinds of sites as the NCore multipollutant monitoring station to take advantage of that record. The EPA will approve these sites, considering both existing and expected new users of the data. The NCore multipollutant stations should be collocated, when appropriate, with other multipollutant air monitoring stations including PAMS, National Air Toxic Trends Station sites, and the $PM_{2.5}$ chemical Speciation Trends Network sites. Collocation will allow use of the same monitoring platform and equipment to meet the objectives of multiple programs where possible and advantageous. Of the approximately 60 required NCore stations, up to 35 existing State-operated multi-monitor stations are already also operating or preparing to also operate the high-sensitivity monitors for CO, SO_2, and NO_y that are part of the NCore requirement.

Although EPA is retaining the 24-hour PM_{10} NAAQS for requisite protection against short-term exposure to thoracic coarse particles and is not promulgating a $PM_{10-2.5}$ NAAQS, the NCore stations are also being required to deploy a $PM_{10-2.5}$ FRM or FEM to build a dataset for scientific research purposes, including supporting health studies and future reviews of the PM NAAQS. Separate PM_{10} monitoring will not be required at NCore stations. For many $PM_{10-2.5}$ methods, including the FRM, PM_{10} data will be readily available as part of the calculated $PM_{10-2.5}$ measurement. Even if a $PM_{10-2.5}$ method that does not report PM_{10} is approved as an FEM and is deployed to one or more NCore sites, PM_{10} will still be available by virtue of the independent measurements of $PM_{2.5}$ and $PM_{10-2.5}$ (which could appropriately be summed). Therefore, EPA is not making measurements of PM_{10} a requirement of the NCore network. Also, since the NCore network of $PM_{10-2.5}$ FRM/FEM is not being used for attainment/nonattainment determinations, agencies may operate filter methods on as infrequent a schedule as a 1-in-3 day sampling.

This final rule contains a requirement for $PM_{10-2.5}$ speciation to be conducted at NCore multipollutant monitoring stations. The EPA had proposed a requirement for $PM_{10-2.5}$ speciation in 25 areas, with the areas required to have this monitoring selected based on having an MSA population over 500,000 and having an estimated design value of greater than 80 percent of the proposed $PM_{10-2.5}$ NAAQS. This would have concentrated the $PM_{10-2.5}$ speciation monitoring in areas that have high populations and high exposures to $PM_{10-2.5}$. Since EPA is requiring $PM_{10-2.5}$ monitoring at NCore primarily for scientific purposes, it is more appropriate to have monitoring in a variety of urban and rural locations so as to increase the diversity of areas that have available chemical species data to use in scientific studies. The EPA had already proposed to have chemical speciation for $PM_{2.5}$ at NCore stations. The collocation of both $PM_{10-2.5}$ and $PM_{2.5}$ speciation monitoring at NCore stations is consistent with the multipollutant objectives of the NCore network and will support further research in understanding the chemical composition and sources of PM_{10} and $PM_{10-2.5}$, and $PM_{2.5}$ at a variety of urban and rural locations.

Once these multipollutant NCore stations are established, it is EPA's intention that they operate for many years in their respective locations. Therefore, State and local agencies are encouraged to insure long-term accessibility to the sites proposed for NCore monitoring stations. Relocating these stations will require EPA approval, which will be based on the data needs of the host State and other clients of the information.

The EPA may negotiate with some States, and possibly with some Tribes, for the establishment and operation of additional rural NCore multipollutant monitoring stations to complement the stations required by today's action.

The EPA is in the process of upgrading the CASTNET monitoring capabilities to allow stations to provide even more useful data to multiple users. The EPA expects that about 20 CASTNET sites, operated at EPA expense, will have new capabilities equivalent to some of the capabilities envisioned for NCore multipollutant sites. After consultations with State air quality planners and other data users, EPA may adjust the goal of having 20 rural State-operated NCore stations, if some of these CASTNET stations can achieve the same data objectives. This would preserve State/local funding resources for other types of monitoring. Alternatively, the CASTNET stations will contribute to a more robust rural network with multipollutant capabilities.

2. Requirements for Operation of $PM_{10-2.5}$ Stations

For $PM_{10-2.5}$, EPA proposed a new minimum network requirement based on metropolitan statistical area (MSA) population and estimated $PM_{10-2.5}$ design value. See 71 FR 2732–2736. Under that proposal, only those MSAs that contained an urbanized area of at least 100,000 persons were required to have one or more monitors. The minimum network design requirements would not have included separate requirements for multiple urbanized areas of 100,000 persons or more within a single MSA. Where more than one MSA was part of a CSA, each MSA was treated separately and was subject to individual requirements.

The EPA proposed that the actual or estimated $PM_{10-2.5}$ design value (3-year average of 98th percentile 24-hour concentrations) of a MSA, where one could be calculated, be used as a second factor to increase the minimum number of monitors in MSAs with higher estimated ambient coarse particle levels and to reduce requirements in MSAs with lower estimated concentrations. The EPA developed an initial database of estimated $PM_{10-2.5}$ design values by analyzing concentrations from existing collocated or nearly collocated PM_{10} and $PM_{2.5}$ monitors in each MSA and identifying which pairs met the proposed siting criteria which specified when a monitor was suitable for comparison to the proposed $PM_{10-2.5}$ NAAQS. Monitoring agencies were given the option of proposing other procedures for calculating estimated $PM_{10-2.5}$ design values as a substitute for EPA-calculated values.

The EPA's proposal would have required as many as five $PM_{10-2.5}$ monitors in MSAs with total population of more than 5 million with actual or estimated design values of greater than 80 percent of the proposed $PM_{10-2.5}$ NAAQS, and no monitors in MSAs under 1 million people with actual or estimated design values less than 50 percent of that proposed NAAQS. The EPA estimated that the size of the minimum required $PM_{10-2.5}$ network would be approximately 250 monitors based on these proposed requirements and the most recent estimates of $PM_{10-2.5}$ design values available at the time of proposal. An additional review of urbanized area population counts and estimated design values completed after proposal subsequently reduced the

estimated size of the required $PM_{10-2.5}$ network to approximately 225 monitors (not counting $PM_{10-2.5}$ monitors at NCore stations) through the elimination of some MSAs where the population of the urbanized area was found to be fewer than 100,000 persons, or where updated estimated design values decreased sufficiently for monitoring requirements to drop into an adjoining design value category with lower requirements.

As noted earlier, in addition to the minimum monitoring requirements, EPA proposed a five-part test that would be used to determine whether potential $PM_{10-2.5}$ monitoring sites were suitable for comparison to the proposed NAAQS. All five parts of the site-suitability test were required to be met for data from required monitors or non-required monitors to be compared to the proposed $PM_{10-2.5}$ NAAQS.

The EPA received extensive comments on all aspects of the $PM_{10-2.5}$ network design proposal including the minimum monitoring requirements, five-part suitability test for $PM_{10-2.5}$ NAAQS comparability, and monitor placement criteria. As summarized in section III.C.2 of the preamble for the NAAQS revisions published elsewhere in this **Federal Register**, EPA is not adopting a proposed $PM_{10-2.5}$ NAAQS but instead will be retaining the current 24-hour PM_{10} standard. Therefore, the elements of the $PM_{10-2.5}$ monitoring network design that were proposed to implement an ambient network for the primary purpose of determining NAAQS compliance are no longer required and are not included in this final rule.

As described elsewhere in this notice, EPA is requiring $PM_{10-2.5}$ mass concentration and speciation monitoring as part of the NCore network of multipollutant sites. These sites are intended to track long-term trends for accountability of emissions control programs and health assessments that contribute to ongoing reviews of the NAAQS; support development of emissions control strategies through air quality model evaluation and other observational methods; support scientific studies ranging across technological, health, and atmospheric process disciplines; and support ecosystem assessments.

3. Requirements for Operation of $PM_{2.5}$ Stations

The $PM_{2.5}$ network includes over 1,200 FRM samplers at approximately 900 sites that are operated to determine compliance with the NAAQS; track trends, development, and accountability of emission control programs; and provide data for health and ecosystem assessments that contribute to periodic reviews of the NAAQS. More than 500 continuous $PM_{2.5}$ monitors are operated to support public reporting and forecasting of the AQI.

The EPA proposed to modify the network minimum requirements for $PM_{2.5}$ monitoring so that multiple urban monitors in the same MSA or CSA are not required if they are redundant or are measuring concentrations well below the NAAQS. See 71 FR 2741. EPA proposed to base minimum monitoring requirements on $PM_{2.5}$ concentrations as represented by the design value of the area, and on the census population of the CSA, or in cases where there is no CSA, the MSA. Overall, this was expected to result in a lower number of required sites (to satisfy minimum network design requirements); however, EPA recommended that States continue to operate a high percentage of the existing sites now utilizing FRM, but with FEM and ARM continuous methods replacing the FRM monitors at many of the sites.[17] *Id.*

The EPA proposed to require that all sites counted by a State towards meeting the minimum requirement for the number of $PM_{2.5}$ sites have an FRM, FEM, or ARM monitor. The EPA also proposed that at least one-half of all the required $PM_{2.5}$ sites be required to operate $PM_{2.5}$ continuous monitors of some type even if not an FEM or ARM.

As noted, EPA proposed to use design value and population as inputs in deciding the minimum required number of $PM_{2.5}$ monitoring sites in each CSA/MSA. The EPA proposed these inputs so that monitoring resources would be prioritized based on the number of people who may be exposed to a problem and the level of exposure of that population. Metropolitan areas with smaller populations would not be required to perform as much monitoring as larger areas. If ambient air concentrations as indicated by historical monitoring are low enough, these smaller population areas would not have been required to continue to perform any $PM_{2.5}$ monitoring.

The proposed amendments also would have required fewer sites when design values are well above (rather than near) the level of the NAAQS to allow more flexibility in the use of monitoring resources in areas where States and EPA are already confident of the severity and extent of the $PM_{2.5}$ problem and possibly in more need of other types of data to address it.

We proposed to retain the current siting criteria for $PM_{2.5}$, which have an emphasis on population-oriented sites at neighborhood scale and larger. See 71 FR 2741. In the proposal, EPA stated that these current design criteria appeared to remain appropriate for implementation of the proposed primary $PM_{2.5}$ NAAQS. See 71 FR 2742. The proposal stated that the existing minimum requirements effectively ensure that monitors are placed in locations that appropriately reflect the community-oriented area-wide concentrations levels used in the epidemiological studies that support the proposed (and now final) lowering of the 24-hour NAAQS.

The EPA further proposed that background and transport sites remain a required part of each State's network to support characterization of regional transport and regional scale episodes of $PM_{2.5}$. To meet these requirements, IMPROVE samplers could be used even though they would not be eligible for comparison to the $PM_{2.5}$ NAAQS; these samplers are currently used in visibility monitoring programs in Class I areas and national parks. Sites in other States which are located at places that make them appropriate as background and transport sites could also fulfill these minimum siting requirements.

The preamble to the proposal also pointed out that in most MSAs, the $PM_{2.5}$ monitor recording the maximum annual $PM_{2.5}$ concentrations is the same as the monitor showing the maximum 24-hour $PM_{2.5}$ concentrations, suggesting that generally it will be these common high-reading monitors that will determine attainment/nonattainment for both the annual and 24-hour $PM_{2.5}$ NAAQS. 71 FR 2742. The preamble further noted that where this is the case, supplemental monitors, such as continuous $PM_{2.5}$ monitors and $PM_{2.5}$ speciation monitors, should already be well located to help in understanding the causes of the high $PM_{2.5}$ concentrations. In a relatively small number of cases, certain microscale $PM_{2.5}$ monitors that have not been eligible for comparison to the annual $PM_{2.5}$ NAAQS and that have been complying with the pre-existing 24-hour $PM_{2.5}$ NAAQS of 65 $\mu g/m^3$, and therefore have no impact on attainment status, may become more influential to attainment status under the more stringent level of the then-proposed, now adopted 24-hour $PM_{2.5}$ standard. In these cases, EPA noted that States may choose to move accompanying speciation and continuous monitors to

[17] As explained earlier, an approved regional method (ARM) is a $PM_{2.5}$ method that has been approved specifically within a State, local, or Tribal air monitoring network for purposes of comparison to the National Ambient Air Quality Standards and to meet other monitoring objectives. See section V.D.2 of this preamble.

the new site of particular interest to get a better characterization of $PM_{2.5}$ at that location.

The EPA received a number of comments regarding the $PM_{2.5}$ network design. Several commenters expressed concern regarding the provision to allow fewer required sites when monitored $PM_{2.5}$ concentrations are significantly above the $PM_{2.5}$ NAAQS. Commenters stated that allowing fewer sites would be inadequate to demonstrate actual ambient air conditions. One commenter stated that the provision had merit for long-term NAAQS such as the annual average but not for short term standards. The commenter pointed out that long term standards, where concentrations are averaged out over a multiple year period, tend to provide relatively uniform results even over a large geographical area; however, daily observations are going to be more variable at a given site and from site to site. Other commenters expressed concern that while they appreciated the flexibility to redirect resources to speciation sampling in areas with significantly high NAAQS design values, there would still be a need for both speciation and FRM data. In these cases, while the flexibility may be available, in practice it would be difficult to shut down a monitor in an area that is significantly above the NAAQS.

The EPA also received comments on using CSA as the definition for a metropolitan area in which to apply the minimally required $PM_{2.5}$ monitoring network criteria. Commenters expressed concern that the CSA was too large an area to apply minimum monitoring requirements and that it may result in the loss of essential monitors necessary to characterize the extent of nonattainment areas. In addition, EPA received comments on the proposed requirement for the $PM_{2.5}$ monitoring network to provide for one-half the required sites, rounded-up, to operate $PM_{2.5}$ continuous monitors. Commenters expressed concern that requiring $PM_{2.5}$ continuous monitors, none of which at present meet FEM and/or ARM performance criteria, may result in minimizing the impetus for equipment manufacturers to further develop versions of these technologies that would meet the FEM/ARM performance criteria. Some commenters expressed concern that although $PM_{2.5}$ continuous monitors serve multiple monitoring objectives, which underscores the need for their operation, requiring collocation with FRMs should not be a requirement of all the sites since it places an unnecessary burden on the States.

The EPA also received several comments regarding the location of required $PM_{2.5}$ monitoring sites, questioning EPA's proposal to keep the siting requirements for $PM_{2.5}$ monitors the same despite the revision of the 24-hour NAAQS to a level at which commenters asserted that violations of the 24-hour NAAQS may occur in many middle scale or microscale locations not presently experiencing violations of the current 24-hour NAAQS. The gist of the comments was that more monitors should be deployed in middle and/or microscale locations to find such violations. One commenter recommended that EPA specifically require a monitoring organization to have at least one microscale site in any area that is nonattainment or marginally nonattainment for the 24-hour NAAQS.

In response to concerns about requiring fewer $PM_{2.5}$ monitoring sites when monitored $PM_{2.5}$ concentrations are significantly above the NAAQS, EPA is not adopting the provision and will instead provide two ranges of minimum monitoring requirements depending on design value. As proposed, agencies with areas that are significantly below the $PM_{2.5}$ NAAQS (less than or equal to 85 percent of the annual and 24-hour $PM_{2.5}$ NAAQS) will have a lower minimum monitoring requirement. Areas that are within 15 percent of the NAAQS or above it will be required to operate more $PM_{2.5}$ monitoring sites (i.e., be required to deploy a greater minimum number of monitors), relative to those at less than 85 percent of the NAAQS.

To address the comments concerning the most appropriate Census Bureau definition in which to apply the $PM_{2.5}$ minimum monitoring requirements, EPA compared the current network to the number of monitors that would be required using either CSA or MSA as the unit for applying monitoring requirements. The results demonstrated that using MSA ensures a few more required sites in areas that have multiple MSAs making up a large CSA with high populations and large geographical areas, without requiring new sites of less obvious priority in MSAs that have smaller geographic coverage and population. Since the overall goal of reducing redundant required sites in large metropolitan areas can be met by using MSA as the unit for monitoring requirements, and using MSA as the unit will also result in multiple MSAs with high design values in the same CSA each having minimum monitoring requirements to address spatial gradients in large areas, EPA is adopting the MSA in as the geographic unit for applying the minimum $PM_{2.5}$ monitoring requirements. In a CSA, each MSA must meet the MSA requirements separately.

In considering the comments on requiring one-half the required $PM_{2.5}$ sites to have continuous monitors, EPA notes that the existing network of monitors is providing invaluable data for reporting and forecasting of the AQI and in support of emergency situations such as wildfires and natural disasters (e.g., Hurricane Katrina). Ensuring a minimum network of these monitors is essential to informing the public and policy makers on the quality of the air during air pollution episodes. The technology utilized in the network continues to evolve as agencies adopt the most suitable methods for use in their own network. The EPA believes that as agencies continue to purchase the most optimal equipment for their networks and as instrument manufacturers now will have the opportunity to receive FEM or ARM approval for their method(s), manufacturers will continue to develop better continuous instruments. The EPA is therefore adopting the proposed requirement for one-half the required $PM_{2.5}$ sites to have continuous monitors as proposed. However, to address the concern about whether required continuous monitors need to be collocated with a matching second continuous monitor, this final rule states that only one of all the required $PM_{2.5}$ continuous monitors in each MSA needs to have such a collocated match. This will allow a minimal level of performance characterization of the continuous monitors in each area that they are operated. Additional $PM_{2.5}$ continuous monitors, when required, can either be collocated with FRMs or set up at non-collocated sites to provide better spatial coverage of the MSA.

With regard to concerns expressed in comments about monitor siting in light of the revised 24-hour $PM_{2.5}$ NAAQS, EPA agrees that the proposed change in the level of the primary 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$ raised the issue of whether any commensurate changes would be needed in these requirements. The EPA has considered the original requirements for $PM_{2.5}$ network design promulgated in 1997 and their rationale, how the $PM_{2.5}$ network is currently configured, what if any changes need to be made to this network to make it consistent with the intended level of protection of the lower 24-hour $PM_{2.5}$ NAAQS in combination with the annual $PM_{2.5}$ NAAQS, and whether these or any changes should be required by a general rule or developed on a case-by-case basis.

In specifying monitor siting criteria for the original $PM_{2.5}$ monitoring network in 1997, EPA noted that the annual standard had been set based on epidemiology studies in which monitors generally were representative of community-average exposures. The EPA stated its expectations that the annual standard would generally be the controlling standard in designating nonattainment areas and that controlling emissions to reduce annual averages would lower both annual and 24-hour $PM_{2.5}$ concentrations across each annual NAAQS nonattainment area. Accordingly, the $PM_{2.5}$ network design provisions in that final rule (62 FR 38833, July 18, 1997) and EPA's subsequent negotiations with State/local monitoring agencies over monitoring plans were largely but not solely directed at obtaining air quality data reflecting community-wide exposures by placing monitors in neighborhood and larger scales of representation.

Section 2.8 of appendix D of 40 CFR part 58 as promulgated in 1997 had only a few definite requirements regarding the siting of $PM_{2.5}$ monitors. Section 2.8.1.3 specified how many ''core'' monitors representing community-wide air quality were required based on MSA population. For areas with populations of 500,000 or more, section 2.8.1.3.1(a) required that at least one core monitoring station must be placed in a ''population-oriented'' area of expected maximum concentration and (unless waived under section 2.8.1.3.4) at least one core station in an area of poor air quality. Areas with populations between 200,000 and 500,000 were required to operate at least one core monitor. Section 2.8.1.3.4 strongly encouraged any State with an MSA with only one required monitor (due to being fewer than 500,000 in population or due to a waiver) to site it so it represented community-oriented concentrations in areas of high average $PM_{2.5}$ concentrations. Section 2.8.1.3.7 required core monitoring sites to represent neighborhood or larger spatial scales. States could at their initiative place additional monitors anywhere, but monitors in relatively unique microscale, localized hot spot, or unique middle-scale locations cannot be compared to the annual NAAQS, and any monitoring site must be population-oriented to be compared to either NAAQS. Part 58 App. D section 2.8.1.2.3.

In practice, the majority of $PM_{2.5}$ monitors are deployed at neighborhood scale and larger, meaning that they are located far enough from large emission sources that they represent the fairly uniform air quality across an area with dimensions of at least a few kilometers and thus can be considered community-oriented. The existing $PM_{2.5}$ monitoring network continues to mostly be made up of these population-oriented, community-oriented, neighborhood scale monitoring sites. The EPA is presently aware of fewer than ten $PM_{2.5}$ monitors that are sited in relatively unique population-oriented microscale areas, localized hot spots, or unique population-oriented middle-scale areas. Such sites may have higher concentrations than neighborhood scale sites on at least some days because they may be close to and downwind of large emission sources, but the number of people exposed to such concentrations is not large relative to the surrounding communities.

The EPA believes the $PM_{2.5}$ networks that were deployed were, and the networks that are now operating currently are, consistent with the intended level of protection of the annual $PM_{2.5}$ NAAQS. Consistency or inconsistency with regard to the 24-hour $PM_{2.5}$ NAAQS has not been of practical significance until now due to the near absence of violations of that standard. In the January 17, 2006, proposal notice, EPA said that it believed that the 1997 rule's design criteria remained appropriate for implementation of the proposed primary $PM_{2.5}$ NAAQS, including the lower 24-hour NAAQS, because these requirements effectively ensured that monitors are placed in locations that appropriately reflect the community-oriented areawide concentration levels used in the epidemiological studies that support the proposed lowering of the 24-hour $PM_{2.5}$ NAAQS. 71 FR 2742. The EPA continues to believe this, noting that the monitors used in the epidemiology studies underlying the 24-hour $PM_{2.5}$ NAAQS were sited similar to the majority of monitors in the existing State/local networks.

No comments directly contradicted this assessment. While an implication of the final monitoring rule provisions regarding siting of $PM_{2.5}$ monitors is that States may choose not to monitor microenvironment or middle scale locations where some people are exposed to 24-hour concentrations above the level of the 24-hour NAAQS, such a result remains consistent with the community-oriented area-wide level of protection on which the 24-hour $PM_{2.5}$ NAAQS is premised. Thus, EPA believes it is not appropriate to specifically require any number of monitors to be placed in microenvironment or hot spot locations as one commenter suggested.

On the other hand, States and EPA may agree as part of the annual monitoring plan submission by the State and approval by the Regional Administrator that in specific cases placement of new or relocated monitors into microenvironment or middle scale locations is warranted and consistent with the intended level of protection of the 24-hour $PM_{2.5}$ NAAQS. States may also propose, and EPA would be inclined to approve, the placement of $PM_{2.5}$ monitors in populated areas too small to be subject to the requirements regarding minimum numbers of monitors, if there is reason to believe $PM_{2.5}$ concentrations are of concern. Of particular interest may be smaller cities and towns which presently lack any $PM_{2.5}$ monitor but which experience emission patterns such as use of wood stoves and/or weather conditions such as inversions which can create high short-term concentrations of $PM_{2.5}$. States also remain free to place SPM at any location, without need for EPA review or approval.[18]

The proposed rule text for 40 CFR 58, appendix D inadvertently failed to include rule text on $PM_{2.5}$ monitoring network design criteria, found in existing appendix D section 2.8.1.2.3, setting forth the requirements that: (1) The required monitors are sited to represent community-wide air quality, (2) at least one monitoring site is placed in a ''population-oriented'' area of expected maximum concentration, and (3) at least one station is placed in an area of poor air quality. Therefore, this final rule restores these pre-existing requirements to appendix D. This final rule sets out these criteria (in substantively identical but slightly redrafted form) in appendix D section 4.7.1(b).

Also, as noted in the proposal and again above, some monitors that have not measured high concentrations relative to the 1997 24-hour NAAQS may become more influential to attainment status under the just adopted, more stringent 24-hour NAAQS. In these cases, EPA encourages States to consider adding or moving speciation and continuous monitors to the newly influential site to get a better characterization of $PM_{2.5}$ concentrations and their causes at that location.

Finally, this final rule clarifies that IMPROVE monitors operated by an

[18] The possible additional monitoring discussed in the text above could be compared solely to the 24-hour $PM_{2.5}$ NAAQS. As mentioned earlier, the 1997 rules provide that monitors that are sited in relatively unique population-oriented microscale areas, localized hot spots, or unique population-oriented middle-scale areas, may not be compared to the annual $PM_{2.5}$ NAAQS.

organization other than the State may be counted as satisfying the State's obligation to operate background and transport monitoring sites for $PM_{2.5}$.

4. Requirements for Operation of PM_{10} Stations

PM_{10} monitors currently are deployed throughout the country at about 1,200 sites, with most metropolitan areas already operating more PM_{10} monitors than are required by current monitoring requirements.

In the January 17, 2006, proposal notice, EPA proposed changes to the PM_{10} requirements in coordination with new minimum requirements for a $PM_{10-2.5}$ monitoring network in support of the proposed 24-hour $PM_{10-2.5}$ NAAQS which would have eventually replaced the PM_{10} NAAQS entirely. See 71 FR 2742. As already explained, EPA is not finalizing the proposed NAAQS for $PM_{10-2.5}$ and instead is retaining the 24-hour PM_{10} NAAQS for all parts of the U.S. This change has necessitated a different approach for PM_{10} minimum monitoring requirements from the one proposed.

Rather than revoking PM_{10} monitoring requirements, as proposed, EPA believes that a robust nationwide monitoring network is required to provide compliance data for the 24-hour PM_{10} NAAQS and to support other objectives including the assessment of long-term trends, evaluations of the effectiveness of State and local coarse particle control programs, and health effects research. The EPA has therefore considered whether the existing National Air Monitoring Station Criteria in Table 4 of appendix D of 40 CFR part 58, last revisited in 1997, are still appropriate for these purposes. Because these criteria have an urban focus by being based on MSAs, allow for local considerations to be a factor in determining the actual required number of stations, require more stations in larger MSAs and MSAs with more evidence of poor PM_{10} air quality while also requiring some stations even in clean MSAs of a certain size, and in the aggregate will result in a required number of PM_{10} monitors that is similar to the required numbers of ozone and $PM_{2.5}$ monitors, EPA believes these criteria are appropriate. With regard to the comparison to the required numbers of ozone and $PM_{2.5}$ monitors, EPA has considered two directionally opposite factors. PM_{10} is less spatially uniform than O_3 or $PM_{2.5}$, suggesting the need for relatively more intensive monitoring in areas with PM_{10} problems, but PM_{10} concentrations in most areas are below the PM_{10} NAAQS (unlike for O_3 and $PM_{2.5}$) suggesting that fewer monitors should be required overall for PM_{10}. This final rule therefore retains the current PM_{10} minimum network requirements, except that these will no longer be called ''NAMS'' requirements.

The current PM_{10} minimum monitoring requirements in section 3.7.7 of part 58 appendix D are based on MSA population and three different ranges of ambient PM_{10} concentrations as compared to the PM_{10} NAAQS. For MSAs in the lowest category of ambient PM_{10} concentrations, those for which ambient PM_{10} data show concentrations less than 80 percent of the NAAQS, at least one monitor is required if the population of the MSA is 500,000 or greater. For MSAs in the highest category of ambient PM_{10} concentrations, those for which ambient PM_{10} data show concentrations exceeding the NAAQS by 20 percent or more, at least one monitor is required if the population of the MSAs is 100,000 persons or greater. These requirements list ranges of required monitors, with the actual number of monitors to be determined by EPA and States.

Based on PM_{10} ambient data for 2003–2005 and current census population statistics, a minimum of between 200 and 500 PM_{10} FRM/FEM monitors will be required across all affected MSAs. Over 800 PM_{10} monitors are in fact currently deployed in these MSAs. About 400 other PM_{10} monitors currently operate outside the boundary of any MSA. As stated in section III.B of this preamble, EPA believes a reduction in the size of the existing monitoring networks for certain pollutants, including PM_{10}, for which the large majority of monitors record no NAAQS violations, is an appropriate way to free up resources for higher priority monitoring objectives. These higher priority objectives could include meeting both the new requirements in this final rule such as the NCore multipollutant measurements and objectives defined by the local air quality management program. The EPA notes that many PM_{10} monitors have been recording concentrations well below the 24-hour PM_{10} NAAQS and thus are candidates for discontinuation at a State's initiative. States may also choose to continue to operate monitors in excess of the minimum requirements. To the extent that States and Tribes are considering reducing the total number of PM_{10} monitors deployed, EPA believes, consistent with the basis for retaining the 24-hour PM_{10} standard, priority should be given to maintaining monitors sited in urban and industrial [19] areas. States may of course choose to retain PM_{10} monitors that are recording concentrations below the PM_{10} NAAQS level to support monitoring objectives other than attainment/nonattainment determinations, such as baseline monitoring for prevention of significant deterioration permitting or public information. The EPA expects to work with States to assess their PM_{10} networks and help determine which of these monitors are delivering valuable data and which monitors present disinvestment opportunities. As should be evident, however, States may not reduce their PM_{10} networks below the minimum requirements for monitoring within MSAs given in 40 CFR part 58 appendix D.

In addition, if States and Tribes are considering deploying new PM_{10} monitors, EPA recommends, again consistent with the basis for retaining the 24-hour PM_{10} standard, that those monitors be placed in areas where there are urban and/or industrial sources of thoracic coarse particles. Furthermore, consistent with the monitors used in studies that informed our decision on the level of the standard (see section III.D of the final rule on the PM NAAQS published elsewhere in today's **Federal Register**), EPA recommends that any new PM_{10} monitors be placed in locations that are reflective of community exposures at middle and neighborhood scales of representation, and not in source-oriented hotspots that are not population oriented.

The final rule omits two passages in section 4.6 (Particulate Matter (PM_{10}) Design Criteria) of 40 CFR 58, appendix D that were included for providing context for the proposed rule. The omitted passages are 4.6(b)(4) (Urban scale) and 4.6(b)(5) (Regional scale). As explained below, these two passages are not consistent with EPA's intention to preserve the substance of the 1997 monitoring rule regarding scales of representativeness, while restructuring appendix D to eliminate SLAMS versus NAMS distinctions and to make clearer which requirements (and explanatory background and guidance) applied to each individual pollutant. In appendix D of the 1997 monitoring rule, section 2.8 (Particulate Matter Design Criteria for SLAMS) addressed both $PM_{2.5}$ and PM_{10}, in some sentences referring explicitly to $PM_{2.5}$, PM_{10}, or both, and in some sentences referring only in general to particulate matter. In this final rule, section 4.6 (Particulate Matter (PM_{10})

[19] As used in the Staff Paper, the term ''mining sources'' is intended to include all activities that encompass extraction and/or mechanical handling of natural geologic crustal materials. In the context of this rule making, neither mining nor agricultural sources are included in the more general category of ''industrial sources.''

Design Criteria) addresses this subject matter for PM_{10}, while section 4.7 (Fine Particulate Matter ($PM_{2.5}$) Design Criteria) does so for $PM_{2.5}$. In the proposed rule, for the purpose of providing context, EPA included paragraphs on microscale, middle scale, neighborhood scale, urban scale, and regional monitoring scales in both section 4.6 and 4.7. However, EPA upon closer consideration has determined that omitting the paragraphs on urban scale and regional scale from section 4.6 is appropriate for PM_{10}, in terms of clarifying and preserving the effective substance of the 1997 rule for PM_{10}. The bases for reaching this conclusion include the following: (1) The paragraphs concerning these scales of representation in the 1997 appendix D (section 2.8.0.7 and 2.8.0.8) mention $PM_{2.5}$ specifically but not PM_{10}, (2) the paragraph which precedes the five paragraphs on the five scales (2.8.0.2) states that middle and neighborhood scales are the most important scales for PM_{10}, (3) section 2.8 in the 1997 rule was titled as applying to SLAMS in particular but no SLAMS monitors were specifically required at any spatial scale or scales, (4) under section 3.7 (Particulate Matter Design Criteria for NAMS) specific numbers of PM_{10} monitors were required but without specification as to spatial scale, and (5) Table 6 of appendix D in the 1997 rule indicates that only the micro, middle, and neighborhood scales are ''required for NAMS.'' The EPA notes that in the final rule, the same numbers of PM_{10} monitors are required as in the 1997 rule, but they are not referred to as NAMS monitors. The EPA notes that urban scale and regional scale are of little, if any, relevance to PM_{10} monitoring, because of the short transport distances for PM_{10}, especially when emitted near ground level. In contrast, because $PM_{2.5}$ is a secondary pollutant, large spatial scales are relevant because monitors in such locations will reflect regional emissions trends and transport patterns.

5. Requirements for Operation of Carbon Monoxide, Sulfur Dioxide, Nitrogen Dioxide, and Lead Monitoring Stations

Criteria pollutant monitoring networks for the measurement of CO, SO_2, NO_2, and Pb are primarily operated to determine compliance with the NAAQS and to track trends and accountability of emission control programs as part of a SIP. Because these criteria pollutant concentrations are typically well below the NAAQS, there is limited use for public reporting to the AQI.

The EPA proposed to revoke all minimum requirements for CO, SO_2, and NO_2 monitoring networks, and reduce the requirements for Pb. See 71 FR 27423. The proposal allowed for reductions in ambient air monitoring for CO, SO_2, NO_2, and Pb, particularly where measured levels are well below the applicable NAAQS and air quality problems are not expected, except in cases with ongoing regulatory requirements for monitoring such as SIP or permit provisions. The EPA stated it would work with States on a voluntary basis to make sure that at least some monitors for these pollutants remain in place in each EPA region. Measurement of CO, SO_2, and NO_y were also proposed as required measurements at NCore sites. There may be little regulatory purpose for keeping many other sites showing low concentrations, other than specific State, local, or Tribal commitments to do so. However, in limited cases, some of these monitors may be part of a long-term record utilized in a health effects study. Under 40 CFR 58.11 of this final rule, States must consider the effect of monitoring site closures on data users other than the State itself, such as health effects studies. The EPA expects State and local agencies to seek input on which monitors are being used for health effects studies so they can give this consideration. See also section IV.E.8 of this preamble.

6. Requirements for Operation of Ozone Stations

Ozone (O_3) monitors currently are deployed throughout the country at about 1,200 sites, with most metropolitan areas already operating more O_3 monitors than would be required by today's action. The EPA does not anticipate or recommend significant changes to the size of this network because O_3 remains a pollutant with measured levels near or above the NAAQS in many areas throughout the country. However, this final rule should help to better prioritize monitoring resources depending on the population and levels of O_3 in an area.

For O_3, EPA proposed changing the minimum network requirement from at least two sites in ''any urbanized area having a population of more than 200,000'' to an approach that considers the level of exposure to O_3, as indicated by the design value, and the census population of a metropolitan area. See 71 FR 2742. The proposal stated that a CSA, or MSA if there is no CSA, with a population of 10 million or more and a design value near the O_3 NAAQS would be required to operate at least four sites. Smaller CSAs and MSAs as low as 350,000 people in population would be required to operate as few as one site. An even smaller area would have no required monitor, provided its design values (for example, from a previously required monitor or a SPM) were sufficiently low. Taking the same approach used in the proposed minimum requirements for $PM_{2.5}$ sites, EPA proposed that high-population areas with measured ambient concentrations significantly above the NAAQS be allowed to operate one less site than areas with measured ambient concentrations near the NAAQS to allow flexibility of monitoring resources in those areas.

The EPA received a number of comments on the proposed minimum network requirements for O_3. Similar to the comments received on $PM_{2.5}$, many commenters had concerns with requiring only one site when an area is significantly above the NAAQS and with defining the minimum monitoring requirements by CSA instead of by a smaller level of a metropolitan area. For instance, several commenters noted that by applying the minimum monitoring requirements by CSA, agencies may not be required to deploy enough monitors to characterize the within-MSA gradient needed to adequately characterize O_3 across a metropolitan area.

In response to concerns about allowing one less O_3 monitoring site when a high-population area is significantly above the NAAQS, EPA is not adopting this provision. This final rule instead provides two values for the minimum required number of monitors according to design value. Agencies with areas that are significantly below the O_3 NAAQS (less than or equal to 85 percent of the O_3 NAAQS) have the lower minimum monitoring requirement. Areas that are within 15 percent of the NAAQS or above it have will be required to operate more O_3 monitoring sites.

To address the comments concerning the most appropriate Census Bureau-defined area for which to apply the O_3 minimum monitoring requirements, EPA investigated the current network compared with using either CSA or MSA as the basis for applying the minimum network requirements. The results demonstrate that using MSA ensures a few more sites in the small number of large CSAs that have high populations and large geographical areas without unnecessarily requiring new sites in the many areas that have smaller geographic coverage and population. Since using MSA does not impose a significant new burden on the States and makes it more likely that within-MSA gradient characterization of

O_3 will be characterized in high concentration areas, EPA is adopting MSA as the appropriate unit of a metropolitan area to apply the minimum O_3 monitoring requirements. All other monitoring requirements for O_3 are adopted as proposed.

7. Requirements for Operation of Photochemical Assessment Monitoring Stations

Section 182(c)(1) of the CAA required EPA to promulgate rules requiring enhanced monitoring of O_3, NO, and VOC in ozone nonattainment areas classified as serious, severe, or extreme. On February 12, 1993, EPA promulgated requirements for State and local monitoring agencies to establish PAMS as part of their SIP monitoring networks in ozone nonattainment areas classified as serious, severe, or extreme. During 2001, EPA formed a workgroup consisting of EPA, State, and local monitoring experts to evaluate the existing PAMS network. The PAMS workgroup recommended that the existing PAMS requirements be streamlined to allow for more individualized PAMS networks to suit the specific data needs for a PAMS area.

The EPA proposed changes to the minimum PAMS monitoring requirements in 40 CFR part 58 to implement the recommendations of the PAMS workgroup. See 71 FR 2743. Specifically, EPA proposed the following changes: The number of required PAMS sites would be reduced; only one Type 2 site would be required per area regardless of population and Type 4 sites would not be required; and only one Type 1 or one Type 3 site would be required per area. The requirements for speciated VOC measurements would be reduced. Speciated VOC measurements would only be required at Type 2 sites and one other site (either Type 1 or Type 3) per PAMS area. Carbonyl sampling would only be required in areas classified as serious or above for the 8-hour O_3 standard. Conventional NO_2/NO_X monitors would only be required at Type 2 sites. High sensitivity NO_y monitors would be required at one site per PAMS area (either Type 1 or Type 3). High sensitivity CO monitors would be required at Type 2 sites.

The EPA received comments on the proposed amended PAMS requirements. Overall, the commenters supported the reduction in minimum PAMS requirements which will allow for more individualized PAMS networks and alternative enhanced O_3 monitoring initiatives. However, some commenters were concerned with the proposed requirement for NO_y monitoring at one Type 1 or one Type 3 site. Several commenters stated that the PAMS NO_y requirement is not likely to be beneficial. They argued that NO_y data in urban areas are likely to be indistinguishable from NO_X data, the commercial NO_y instrumentation is not yet fully developed, NO_y monitors are difficult to site properly, and that few States have the modeling capability to employ NO_y data.

The EPA disagrees with the commenters' statements that PAMS NO_y measurements will not be beneficial. As compared to NO_X measurements, NO_y measurements provide a more complete measurement of the available reactive nitrogen species involved in the photochemical reactions that lead to O_3 formation. One of the primary uses of NO_y data is for O_3 modeling. However, O_3 modeling is not the only use for NO_y data. Long-term measurements of NO_y provide the best indicator of the effectiveness of NO_X controls at reducing the reactive nitrogen compounds involved in O_3 formation. In addition, a relatively simple analysis of the O_3-to-NO_y ratio, or VOC-to-NO_y ratio can be performed to identify if an area is ''NO_X limited'' or ''VOC limited'' which would indicate if additional NO_X controls would be more beneficial than additional VOC controls.

Ideally, the NO_X method should measure NO and NO_2, whereas NO_y measurements include NO, NO_2, and other important reactive nitrogen species (referred to here as NO_z) which includes nitrous acids [nitric acid (HNO_3), and nitrous acid (HONO)], organic nitrates [peroxyl acetyl nitrate (PAN), methyl peroxyl acetyl nitrate (MPAN), and peroxyl propionyl nitrate, (PPN)], and particulate nitrates. However, recent studies have shown that existing NO_X monitors also measure (and misreport as NO_2) some NOz species. The NO_y method was developed as an extension of the NO_X method to accurately measure all reactive nitrogen compounds. Nonetheless, EPA will allow for waivers of the NO_y method (via an alternative plan provided for under paragraph 5.3 of appendix D to part 53) in areas where measured NO_X is expected to provide virtually the same data as NO_y. This is largely expected to be in areas with fresh oxides of nitrogen emissions until such time as the NO_2 method (and hence the NO_X method) is sufficiently improved that having separate measurements of NO_y and NO_X provides more useful information than the existing technology. The EPA has evaluated a number of commercially available NO_y monitors and has found them accurate and reliable. As with many methods, EPA continues to evaluate improvements to the method, but at this time EPA believes that the current method (and commercially available instrumentation) provides data of sufficient quality to meet the PAMS program objectives.

While proper siting of an NO_y monitor (installing a 10 meter tower and meeting proper fetch characteristics) may be difficult in some urban settings, EPA believes that NO_y monitors can be adequately sited at most PAMS areas. Nonetheless, if siting a NO_y monitor is not practicable in a given PAMS area, a State may request an alternative plan, as allowed for under paragraph 5.3 of appendix D to part 53, to allow monitoring of NO_X instead of monitoring for NO_y.

After review and consideration of the comments received, EPA has decided to finalize the revisions to the PAMS requirements as proposed.

F. Appendix E—Probe and Monitoring Path Siting Criteria for Ambient Air Monitoring

The proposed revisions to this appendix consisted of minor organizational changes and two technical changes to the siting criteria affecting $PM_{10-2.5}$ and O_3 monitoring sites. See 71 FR 2748.

1. Vertical Placement of $PM_{10-2.5}$ Samplers

Specific probe siting criteria were required to support the proposed $PM_{10-2.5}$ network. The EPA proposed vertical probe placement requirements that limited microscale $PM_{10-2.5}$ sites to an allowable height range of 2 to 7 meters and neighborhood and large scale $PM_{10-2.5}$ sites to a range of 2 to 15 meters. These ranges were identical to the existing requirements for PM_{10}. The range for middle-scale $PM_{10-2.5}$ sites was limited to 2 to 7 meters which represented a change from PM_{10} where 2 to 15 meters was the allowed vertical placement range for middle-scale sites.

Several commenters supported the proposed $PM_{10-2.5}$ middle-scale vertical requirement as being consistent with the expectation that coarse particle concentrations nearest the breathing zone would be important to measure in the assessment of exposure risk, and that monitoring sites with more elevated inlets would be more likely to miss localized concentrations where the public is exposed. By contrast, other commenters raised concerns that the requirement would result in the measurement of localized (microscale) near-ground conditions not representative of a middle-scale sized area. Commenters also noted the

importance of keeping identical inlet requirements for $PM_{10-2.5}$ and $PM_{2.5}$ to maximize the benefits of having collocated measurements at the same site.

Based on review of the comments, EPA is retaining the 2 to 7 meter vertical requirement for middle-scale $PM_{10-2.5}$ sites. This requirement is consistent with current requirements for microscale PM monitors but would require modifications for existing $PM_{2.5}$ and PM_{10} monitors located between 8 and 15 meters above ground that were intended for middle-scale $PM_{10-2.5}$ measurement. The EPA does not expect this requirement to have a major impact on monitoring networks since this final rule requires $PM_{10-2.5}$ monitoring only at NCore sites, and these sites will typically represent neighborhood or larger scales. This final rule retains the existing rule language that has the option for the Regional Administrator to grant a waiver of siting criteria, providing flexibility for States to document situations where useful data could still be produced by monitors not meeting applicable requirements.

2. Ozone Monitor Setback Requirement From Roads

The EPA proposed an increase to the minimum permitted distance between roadways and the inlet probes of neighborhood and urban scale ozone and oxides of nitrogen sites to reduce the scavenging effects of motor vehicle-related nitric oxide emissions. See 71 FR 2748.

Many commenters believed that the scavenging effects of oxides of nitrogen on O_3 levels in urban, populated areas was more of an area-wide phenomena and would not be changed by moving a site a few meters farther from the nearest roadway. The relative value of the proposed change on the basis of the resource requirements necessary to relocate sites not meeting the increased road setback requirements was also questioned. Some support was noted for the application of the increased roadway setback requirement to new sites as long as existing ozone sites were ''grandfathered.''

The EPA acknowledges the logistical difficulty and expense of moving existing sites to meet the increased setback requirement. To achieve a balance between the goal of minimizing the interference of roadway emissions on O_3 and oxides of nitrogen monitor data and to reduce the burden on affected monitoring organizations, EPA has modified the increased roadway setback requirement to apply only to newly established sites.

G. Sample Retention Requirements

During the regulatory development process, various governmental agencies and health scientists indicated that archiving particulate matter filters for FRM and FEM would be useful for later chemical speciation analyses, mass analyses, or other analyses.

Current sample retention requirements apply specifically to $PM_{2.5}$ filters and require a minimum storage requirement of 1 year. The EPA proposed that retention requirements be expanded to require archival of $PM_{2.5}$, $PM_{10-2.5}$, and PM_{10c} (low volume) filters for a period of 1 year after collection. See 71 FR 2749.

Commenters were supportive of the proposed requirement. Some commenters stated that the required filter retention period should be longer than 1 year, with a range in suggested storage periods of between 3 to 7 years. States provided examples of how filters archived for longer than 1 year were subsequently analyzed to provide data useful in the support of health studies, SIP work, or analysis of exceptional events. Several commenters, while supportive of the rationale for filter archival, preferred that the requirement not be included in the regulation and instead left for voluntary monitoring agency compliance. One commenter suggested that the requirement be clarified to explicitly include retention of blank filters in addition to exposed filters.

The EPA notes the support for the proposed sample retention requirement and did not change that requirement in this final rule. As stated in this final rule, States have the discretion to retain their samples for longer than one year. The EPA supports such procedures, recognizing that States will have different logistical constraints that control the maximum length of time for which filters can be stored. The EPA has clarified that the requirement applies to all such filters referenced in 40 CFR 58.16(f), including exposed filters and blanks.

The EPA acknowledges the concern among some commenters that States retain the right to determine the best use of archived filters. These commenters stated that national considerations for filter analysis should be considered a secondary priority to State needs. The EPA is respectful of this issue, and expects to negotiate with States on the scope of any request for archived filters intended for potentially destructive analyses so that the request if compatible with other State uses for the same type of filters.

The EPA did not propose a specific effective date for this requirement in the monitoring rule and no commenters expressed implementation concerns. Accordingly, this final rule includes an effective date of January 1, 2007 for the sample retention requirement.

In the proposal, rule requirements regarding sample retention were located in section 4.9 of appendix D, a section devoted to network design criteria. The EPA believes that sample retention requirements are more logically located in subpart B of part 58, which contains provisions on data submittal. Accordingly, the title of 40 CFR 58.16 (''Data submittal'') has been renamed ''Data submittal and archiving requirements'' and corresponding rule requirements on sample retention have been moved to 40 CFR 58.16(f) of this final rule.

H. Deletion of Appendices B and F

This final rule removes and reserves appendix B of 40 CFR 58, Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring, and appendix F of 40 CFR part 58, Annual SLAMS Air Quality Information, because both are obsolete.

The preamble to the proposed rule explicitly proposed to remove appendix B because the quality assurance requirements for PSD monitoring were proposed to be moved to appendix A, which this final rule does. See 71 FR 2725. (The amendatory language at the end of the January 17, 2006 proposal notice inadvertently did not list this change.) No adverse comments were received on this change.

The January 17, 2006 notice did not explicitly address the preservation or removal of appendix F, but its effective removal was inherent in the proposed rule because no section of the proposed part 58 would continue to refer to appendix F. Similarly, the final part 58 does not refer to appendix F. Appendix F previously was referenced by 40 CFR 58.26 in subpart C, Annual state air monitoring report, now deleted. Appendix F specified the required content, which was extensive, of the annual report of summarized monitoring data. An extensive annual report of summarized monitoring data is no longer required in this final rule. New section, 40 CFR 58.16, Data submittal, instead requires submission of individual data values. Summary information on monitoring data is still required by 40 CFR 58.15, Annual air monitoring data certification, for the sole purpose of making it clear what data is within the scope of the required certification letter. This final rule does not specify the exact content of the

summary information required by 40 CFR 58.15 in order to provide more flexibility and to accommodate possible evolution of the standardized AQS reports which are the most convenient way for monitoring organizations to provide this information.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Order 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB control number 2060–0084. The information collection requirements are not enforceable until OMB approves them.

The monitoring, recordkeeping, and reporting requirements in 40 CFR parts 53 and 58 are specifically authorized by sections 110, 301(a), and 319 of the Clean Air Act (CAA). All information submitted to EPA pursuant to the monitoring, recordkeeping, and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies in 40 CFR part 2, subpart B.

The information collected under 40 CFR part 53 (e.g., test results, monitoring records, instruction manual, and other associated information) is needed to determine whether a candidate method intended for use in determining attainment of the National Ambient Air Quality Standards (NAAQS) in 40 CFR part 50 will meet the design, performance, and/or comparability requirements for designation as a Federal reference method (FRM) or Federal equivalent method (FEM). The final amendments add requirements for $PM_{10-2.5}$ FEM and FRM determinations, Class II equivalent methods for $PM_{10-2.5}$ and Class III equivalent methods for $PM_{2.5}$ and $PM_{10-2.5}$; reduce certain monitoring and data collection requirements; and streamline EPA administrative requirements.

The incremental annual reporting and recordkeeping burden for this collection of information under 40 CFR part 53 (averaged over the first 3 years of this ICR) for one additional respondent per year is estimated to increase by a total of 2,774 labor hours per year with an increase in costs of $32,000/year. The capital/startup costs for test equipment and qualifying tests are estimated at $3,832 with operation and maintenance costs of $27,772.

The information collected and reported under 40 CFR part 58 is needed to determine compliance with the NAAQS, to characterize air quality and associated health and ecosystems impacts, to develop emission control strategies, and to measure progress for the air pollution program. The amendments revise the technical requirements for certain types of sites, add provisions for monitoring of $PM10_{10-2.5}$, and reduce certain monitoring requirements for criteria pollutants. Monitoring agencies are required to submit annual monitoring network plans, conduct network assessments every 5 years, perform quality assurance activities, and, in certain instances, establish NCore sites by January 1, 2011.

The annual average reporting burden for the collection under 40 CFR part 58 (averaged over the first 3 years of this ICR) for 168 respondents is estimated to decrease by a total of 48,546 labor hours per year with a decrease in costs of $6,151,494. State, local, and Tribal entities are eligible for State assistance grants provided by the Federal government under the CAA which can be used for monitors and related activities.

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 in 40 CFR parts 53 and 58 are listed in 40 CFR part 9. When these ICR are approved by OMB, EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control number for the approved information collection requirements contained in this final rule.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with these final rule amendments.

For the purposes of assessing the impacts of the final amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a government 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 that is not dominant in its field.

After considering the economic impacts of this final rule amendments on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The final requirements in 40 CFR part 53 for an FEM application are voluntary actions on the part of equipment manufacturers to seek EPA approval for their candidate sampling methods. The applications are evaluated according to the requirements in 40 CFR part 53 and test data submitted by the manufacturers to EPA to ensure that the candidate equivalent methods meet the same technical standards as the FRM. The final amendments to 40 CFR part 58 will reduce annual ambient air monitoring costs for State and local agencies by approximately $6.2 million and 48,546 labor hours from present levels. State and Tribal assistance grant funding provided by the Federal government can be used to defray the costs of new or upgraded monitors for the NCore networks.

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 of 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 this final rule an explanation 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.

The EPA has determined that this final 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. The final amendments to 40 CFR part 58 will reduce annual ambient air monitoring costs for State and local agencies by approximately $6.2 million and 48,546 labor hours from present levels. Thus, these final amendments are not subject to the requirements of sections 202 and 205 of the UMRA.

The EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Small governments that may be affected by the final amendments are already meeting similar requirements under the existing rules, and the final amendments will substantially reduce the costs of the existing rules. Therefore, this final rule is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

Executive Order 13132 (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 final rule does not have federalism implications because 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. Thus, Executive Order 13132 does not apply to this final rule.

Although section 6 of the Executive Order does not apply to this final rule, EPA did consult with representatives of State and local governments early in the process of developing this proposed rule. In 2001, EPA organized a National Monitoring Steering Committee (NMSC) to provide oversight and guidance in reviewing the existing air pollution monitoring program and in developing a comprehensive national ambient air monitoring strategy. The NMSC membership includes representatives from EPA, State and local agencies, State and Territorial Air Pollution Program Administrators/Association of Local Air Pollution Control Officials (STAPPA/ALAPCO), and Tribal governments to reflect the partnership between EPA and governmental agencies that collect and use ambient air data. The NMSC formed workgroups to address quality assurance, technology, and regulatory review of the draft ambient air monitoring strategy (NAAMS). These workgroups met several times by phone and at least once in a face-to-face workshop to develop specific recommendations for improving the ambient air monitoring program. A record of the Steering Committee members, workgroup members, and workshop are available on the Web at: *http://www.epa.gov/ttn/amtic/monitor.html.* The EPA also met with State, local, and Tribal government representatives to discuss their comments on the proposed amendments and suggestions for resolving issues.

F. 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 final rule does not have tribal implications, as specified in Executive Order 13175. The final amendments will not directly apply to Tribal governments. However, a Tribal government may elect to conduct ambient air monitoring and report the data to AQS. Since it is possible that tribal governments may choose to establish and operate NCore sites as part of the national monitoring program, EPA consulted with Tribal officials early in the process of developing the proposed rule to permit them to have meaningful and timely input into its development and after proposal to discuss their comments and concerns. As discussed in section VI.E of this preamble, tribal agencies were represented on both the NMSSC and the workgroups that developed the NAAMS document and proposed monitoring requirements. Tribal monitoring programs were represented on both the Quality Assurance and Technology work groups. Participation was also open to tribal monitoring programs on the regulatory review workgroup.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (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, EPA 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 EPA.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because, while it is based on the need for monitoring data to characterize risk,

this final monitoring rule itself does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (58 FR 7629, February 11, 1994) requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. These requirements have been addressed to the extent practicable in the Regulatory Impact Analysis (RIA) for the final revisions to the NAAQS for particulate matter.

I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use'' (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. No significant change in the use of energy is expected because the total number of monitors for ambient air quality measurements will not increase above present levels. Further, EPA has concluded that this final rule is not likely to have any adverse energy effects.

J. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer 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 EPA decides not to use available and applicable voluntary consensus standards.

The final amendments involve environmental monitoring and measurement. Ambient air concentrations of $PM_{2.5}$ are currently measured by the Federal reference method in 40 CFR part 50, appendix L (Reference Method for the Determination of Fine Particulate as $PM_{2.5}$ in the Atmosphere) or by FRM or FEM that meet the requirements in 40 CFR part 53. Ambient air concentrations of $PM_{10-2.5}$ will be measured by the final FRM in 40 CFR part 50, appendix O (Reference Method for the Determination of Coarse Particulate Matter as $PM_{10-2.5}$ in the Atmosphere) published elsewhere in this **Federal Register** or by an FRM or FEM that meets the requirements in 40 CFR part 53. As discussed in section IV.B of this preamble, the final FRM for $PM_{10-2.5}$ is similar to the existing methods for $PM_{2.5}$ and PM_{10}.

Procedures are included in this final rule that allow for approval of an FEM for $PM_{10-2.5}$ that is similar to the final FRM. Any method that meets the performance criteria for a candidate equivalent method may be approved for use as an FRM or FEM.

This approach is consistent with EPA's Performance-Based Measurement System (PBMS). The PBMS approach is intended to be more flexible and cost effective for the regulated community; it is also intended to encourage innovation in analytical technology and improved data quality. The EPA is not precluding the use of any method, whether it constitutes a voluntary consensus standard or not, as long as it meets the specified performance criteria.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. The EPA will submit a report containing the final amendments and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the final amendments in the **Federal Register.** A major rule cannot take effect until 60 days after it is published in the **Federal Register.** This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This final rule will not have an annual effect on the economy of $100 million or more, will not result in a major increase in costs or prices for State or local agencies, and will not affect competition with foreign-based enterprises in domestic and export markets. The final amendments will be effective on December 18, 2006. The final amendments will be effective 60 days after publication in the **Federal Register** to be consistent with the effective date of the revised NAAQS for PM published elsewhere in this **Federal Register.**

Revisions to Ambient Air Monitoring Regulations.

List of Subjects in 40 CFR Parts 53 and 58

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: September 27, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, title 40, chapter I, parts 53 and 58 of the Code of Federal Regulations are amended as follows:

PART 53—[AMENDED]

■ 1. The authority citation for part 53 continues to read as follows:

Authority: Section 301(a) of the Clean Air Act (42 U.S.C. sec. 1857g(a)), as amended by sec. 15(c)(2) of Pub. L. 91–604, 84 Stat. 1713, unless otherwise noted.

Subpart A—[Amended]

■ 2. Sections 53.1 through 53.5 are revised to read as follows:

§ 53.1 Definitions.

Terms used but not defined in this part shall have the meaning given them by the Act.

Act means the Clean Air Act (42 U.S.C. 1857–1857l), as amended.

Additive and multiplicative bias means the linear regression intercept and slope of a linear plot fitted to corresponding candidate and reference method mean measurement data pairs.

Administrator means the Administrator of the Environmental Protection Agency (EPA) or his or her authorized representative.

Agency means the Environmental Protection Agency.

Applicant means a person or entity who submits an application for a Federal reference method or Federal equivalent method determination under § 53.4, or a person or entity who assumes the rights and obligations of an applicant under § 53.7. Applicant may include a manufacturer, distributor, supplier, or vendor.

Automated method or analyzer means a method for measuring concentrations of an ambient air pollutant in which sample collection (if necessary),

analysis, and measurement are performed automatically by an instrument.

Candidate method means a method for measuring the concentration of an air pollutant in the ambient air for which an application for a Federal reference method determination or a Federal equivalent method determination is submitted in accordance with § 53.4, or a method tested at the initiative of the Administrator in accordance with § 53.7.

Class I equivalent method means an equivalent method for $PM_{2.5}$ or $PM_{10-2.5}$ which is based on a sampler that is very similar to the sampler specified for reference methods in appendix L or appendix O (as applicable) of part 50 of this chapter, with only minor deviations or modifications, as determined by EPA.

Class II equivalent method means an equivalent method for $PM_{2.5}$ or $PM_{10-2.5}$ that utilizes a $PM_{2.5}$ sampler or $PM_{10-2.5}$ sampler in which integrated $PM_{2.5}$ samples or $PM_{10-2.5}$ samples are obtained from the atmosphere by filtration and subjected to a subsequent filter conditioning process followed by a gravimetric mass determination, but which is not a Class I equivalent method because of substantial deviations from the design specifications of the sampler specified for reference methods in appendix L or appendix O (as applicable) of part 50 of this chapter, as determined by EPA.

Class III equivalent method means an equivalent method for $PM_{2.5}$ or $PM_{10-2.5}$ that is an analyzer capable of providing $PM_{2.5}$ or $PM_{10-2.5}$ ambient air measurements representative of one-hour or less integrated $PM_{2.5}$ or $PM_{10-2.5}$ concentrations as well as 24-hour measurements determined as, or equivalent to, the mean of 24 one-hour consecutive measurements.

CO means carbon monoxide.

Collocated means two or more air samplers, analyzers, or other instruments that are operated simultaneously while located side by side, separated by a distance that is large enough to preclude the air sampled by any of the devices from being affected by any of the other devices, but small enough so that all devices obtain identical or uniform ambient air samples that are equally representative of the general area in which the group of devices is located.

Federal equivalent method (FEM) means a method for measuring the concentration of an air pollutant in the ambient air that has been designated as an equivalent method in accordance with this part; it does not include a method for which an equivalent method designation has been canceled in accordance with § 53.11 or § 53.16.

Federal reference method (FRM) means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to part 50 of this chapter, or a method that has been designated as a reference method in accordance with this part; it does not include a method for which a reference method designation has been canceled in accordance with § 53.11 or § 53.16.

ISO 9001-registered facility means a manufacturing facility that is either:

(1) An International Organization for Standardization (ISO) 9001-registered manufacturing facility, registered to the ISO 9001 standard (by the Registrar Accreditation Board (RAB) of the American Society for Quality Control (ASQC) in the United States), with registration maintained continuously; or

(2) A facility that can be demonstrated, on the basis of information submitted to the EPA, to be operated according to an EPA-approved and periodically audited quality system which meets, to the extent appropriate, the same general requirements as an ISO 9001-registered facility for the design and manufacture of designated Federal reference method and Federal equivalent method samplers and monitors.

ISO-certified auditor means an auditor who is either certified by the Registrar Accreditation Board (in the United States) as being qualified to audit quality systems using the requirements of recognized standards such as ISO 9001, or who, based on information submitted to the EPA, meets the same general requirements as provided for ISO-certified auditors.

Manual method means a method for measuring concentrations of an ambient air pollutant in which sample collection, analysis, or measurement, or some combination thereof, is performed manually. A method for PM_{10} or $PM_{2.5}$ which utilizes a sampler that requires manual preparation, loading, and weighing of filter samples is considered a manual method even though the sampler may be capable of automatically collecting a series of sequential samples.

NO means nitrogen oxide.

NO_2 means nitrogen dioxide.

NO_X means oxides of nitrogen and is defined as the sum of the concentrations of NO_2 and NO.

O_3 means ozone.

Operated simultaneously means that two or more collocated samplers or analyzers are operated concurrently with no significant difference in the start time, stop time, and duration of the sampling or measurement period.

Pb means lead.

PM means PM_{10}, PM_{10C}, $PM_{2.5}$, $PM_{10-2.5}$, or particulate matter of unspecified size range.

$PM_{2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on appendix L of part 50 of this chapter and designated in accordance with part 53 of this chapter, by an equivalent method designated in accordance with part 53 of this chapter, or by an approved regional method designated in accordance with appendix C to this part.

PM_{10} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix J of part 50 of this chapter and designated in accordance with this part or by an equivalent method designated in accordance with this part.

PM_{10C} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix O of part 50 of this chapter and designated in accordance with this part or by an equivalent method designated in accordance with this part.

$PM_{10-2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers and greater than a nominal 2.5 micrometers as measured by a reference method based on appendix O to part 50 of this chapter and designated in accordance with this part or by an equivalent method designated in accordance with this part.

$PM_{2.5}$ sampler means a device, associated with a manual method for measuring $PM_{2.5}$, designed to collect $PM_{2.5}$ from an ambient air sample, but lacking the ability to automatically analyze or measure the collected sample to determine the mass concentrations of $PM_{2.5}$ in the sampled air.

PM_{10} sampler means a device, associated with a manual method for measuring PM_{10}, designed to collect PM_{10} from an ambient air sample, but lacking the ability to automatically analyze or measure the collected sample to determine the mass concentrations of PM_{10} in the sampled air.

PM_{10C} sampler means a PM_{10} sampler that meets the special requirements for a PM_{10C} sampler that is part of a $PM_{10-2.5}$ reference method sampler, as specified in appendix O to part 50 of this chapter, or a PM_{10} sampler that is part of a $PM_{10-2.5}$ sampler that has been designated as an equivalent method for $PM_{10-2.5}$.

$PM_{10-2.5}$ sampler means a sampler, or a collocated pair of samplers, associated with a manual method for measuring $PM_{10-2.5}$ and designed to collect either $PM_{10-2.5}$ directly or PM_{10C} and $PM_{2.5}$ separately and simultaneously from concurrent ambient air samples, but lacking the ability to automatically analyze or measure the collected sample(s) to determine the mass concentrations of $PM_{10-2.5}$ in the sampled air.

Sequential samples for PM samplers means two or more PM samples for sequential (but not necessarily contiguous) time periods that are collected automatically by the same sampler without the need for intervening operator service.

SO_2 means sulfur dioxide.

Test analyzer means an analyzer subjected to testing as part of a candidate method in accordance with subparts B, C, D, E, or F of this part, as applicable.

Test sampler means a PM_{10} sampler, $PM_{2.5}$ sampler, or $PM_{10-2.5}$ sampler subjected to testing as part of a candidate method in accordance with subparts C, D, E, or F of this part.

Ultimate purchaser means the first person or entity who purchases a Federal reference method or a Federal equivalent method for purposes other than resale.

§ 53.2 General requirements for a reference method determination.

The following general requirements for a Federal reference method (FRM) determination are summarized in table A–1 of this subpart.

(a) *Manual methods*—(1) *Sulfur dioxide (SO_2) and lead.* For measuring SO_2 and lead, appendices A and G of part 50 of this chapter specify unique manual FRM for measuring these pollutants. Except as provided in § 53.16, other manual methods for SO_2 and lead will not be considered for FRM determinations under this part.

(2) *PM_{10}.* A FRM for measuring PM_{10} must be a manual method that meets all requirements specified in appendix J of part 50 of this chapter and must include a PM_{10} sampler that has been shown in accordance with this part to meet all requirements specified in this subpart A and subpart D of this part.

(3) *$PM_{2.5}$.* A FRM for measuring $PM_{2.5}$ must be a manual method that meets all requirements specified in appendix L of part 50 of this chapter and must include a $PM_{2.5}$ sampler that has been shown in accordance with this part to meet the applicable requirements specified in this subpart A and subpart E of this part. Further, FRM samplers must be manufactured in an ISO 9001-registered facility, as defined in § 53.1 and as set forth in § 53.51.

(4) *$PM_{10-2.5}$.* A FRM for measuring $PM_{10-2.5}$ must be a manual method that meets all requirements specified in appendix O of part 50 of this chapter and must include PM_{10C} and $PM_{2.5}$ samplers that have been shown in accordance with this part to meet the applicable requirements specified in this subpart A and subpart E of this part. Further, $PM_{10-2.5}$ FRM samplers must be manufactured in an ISO 9001-registered facility, as defined in § 53.1 and as set forth in § 53.51.

(b) *Automated methods.* An automated FRM for measuring CO, O_3, or NO_2 must utilize the measurement principle and calibration procedure specified in the appropriate appendix to part 50 of this chapter and must have been shown in accordance with this part to meet the requirements specified in this subpart A and subpart B of this part.

§ 53.3 General requirements for an equivalent method determination.

(a) *Manual methods.* A manual Federal equivalent method (FEM) must have been shown in accordance with this part to satisfy the applicable requirements specified in this subpart A and subpart C of this part. In addition, a PM sampler associated with a manual method for PM_{10}, $PM_{2.5}$, or $PM_{10-2.5}$ must have been shown in accordance with this part to satisfy the following additional requirements, as applicable:

(1) *PM_{10}.* A PM_{10} sampler associated with a manual method for PM_{10} must satisfy the requirements of subpart D of this part.

(2) *$PM_{2.5}$ Class I.* A $PM_{2.5}$ Class I FEM sampler must also satisfy all requirements of subpart E of this part, which shall include appropriate demonstration that each and every deviation or modification from the FRM sampler specifications does not significantly alter the performance of the sampler.

(3) *$PM_{2.5}$ Class II.* (i) A $PM_{2.5}$ Class II FEM sampler must also satisfy the applicable requirements of subparts E and F of this part or the alternative requirements in paragraph (a)(3)(ii) of this section.

(ii) In lieu of the applicable requirements specified for Class II $PM_{2.5}$ methods in subparts C and F of this part, a Class II $PM_{2.5}$ FEM sampler may alternatively meet the applicable requirements in paragraphs (b)(3)(i) through (iii) of this section and the testing, performance, and comparability requirements specified for Class III equivalent methods for $PM_{2.5}$ in subpart C of this part.

(4) *$PM_{10-2.5}$ Class I.* A $PM_{10-2.5}$ Class I FEM sampler must also satisfy the applicable requirements of subpart E of this part (there are no additional requirements specifically for Class I $PM_{10-2.5}$ methods in subpart C of this part).

(5) *$PM_{10-2.5}$ Class II.* (i) A $PM_{10-2.5}$ Class II FEM sampler must also satisfy the applicable requirements of subpart C of this part and also the applicable requirements and provisions of paragraphs (b)(3)(i) through (iii) of this section, or the alternative requirements in paragraph (a)(5)(ii) of this section.

(ii) In lieu of the applicable requirements specified for Class II $PM_{10-2.5}$ methods in subpart C of this part and in paragraph (b)(3)(iii) of this section, a Class II $PM_{10-2.5}$ FEM sampler may alternatively meet the applicable requirements in paragraphs (b)(3)(i) and (ii) of this section and the testing, performance, and comparability requirements specified for Class III FEMs for $PM_{10-2.5}$ in subpart C of this part.

(6) *ISO 9001.* All designated FEMs for $PM_{2.5}$ or $PM_{10-2.5}$ must be manufactured in an ISO 9001-registered facility, as defined in § 53.1 and as set forth in § 53.51.

(b) *Automated methods.* All types of automated FEMs must have been shown in accordance with this part to satisfy the applicable requirements specified in this subpart A and subpart C of this part. In addition, an automated FEM must have been shown in accordance with this part to satisfy the following additional requirements, as applicable:

(1) An automated FEM for pollutants other than PM must be shown in accordance with this part to satisfy the applicable requirements specified in subpart B of this part.

(2) An automated FEM for PM_{10} must be shown in accordance with this part to satisfy the applicable requirements of subpart D of this part.

(3) A Class III automated FEM for $PM_{2.5}$ or $PM_{10-2.5}$ must be shown in accordance with this part to satisfy the requirements in paragraphs (b)(3)(i) through (iii) of this section, as applicable.

(i) All pertinent requirements of 40 CFR part 50, appendix L, including sampling height, range of operational conditions, ambient temperature and pressure sensors, outdoor enclosure, electrical power supply, control devices and operator interfaces, data output port, operation/instruction manual, data output and reporting requirements, and any other requirements that would be reasonably applicable to the method, unless adequate (as determined by the Administrator) rationale can be

provided to support the contention that a particular requirement does not or should not be applicable to the particular candidate method.

(ii) All pertinent tests and requirements of subpart E of this part, such as instrument manufacturing quality control; final assembly and inspection; manufacturer's audit checklists; leak checks; flow rate accuracy, measurement accuracy, and flow rate cut-off; operation following power interruptions; effect of variations in power line voltage, ambient temperature and ambient pressure; and aerosol transport; unless adequate (as determined by the Administrator) rationale can be provided to support the contention that a particular test or requirement does not or should not be applicable to the particular candidate method.

(iii) Candidate methods shall be tested for and meet any performance requirements, such as inlet aspiration, particle size separation or selection characteristics, change in particle separation or selection characteristics due to loading or other operational conditions, or effects of surface exposure and particle volatility, determined by the Administrator to be necessary based on the nature, design, and specifics of the candidate method and the extent to which it deviates from the design and performance characteristics of the reference method. These performance requirements and the specific test(s) for them will be determined by Administrator for each specific candidate method or type of candidate method and may be similar to or based on corresponding tests and requirements set forth in subpart F of this part or may be special requirements and tests tailored by the Administrator to the specific nature, design, and operational characteristics of the candidate method. For example, a candidate method with an inlet design deviating substantially from the design of the reference method inlet would likely be subject to an inlet aspiration test similar to that set forth in § 53.63. Similarly, a candidate method having an inertial fractionation system substantially different from that of the reference method would likely be subject to a static fractionation test and a loading test similar to those set forth in §§ 53.64 and 53.65, respectively. A candidate method with more extensive or profound deviations from the design and function of the reference method may be subject to other tests, full wind-tunnel tests similar to those described in § 53.62, or to special tests adapted or developed individually to accommodate the specific type of measurement or operation of the candidate method.

(4) All designated FEM for $PM_{2.5}$ or $PM_{10-2.5}$ must be manufactured in an ISO 9001-registered facility, as defined in § 53.1 and as set forth in § 53.51.

§ 53.4 Applications for reference or equivalent method determinations.

(a) Applications for FRM or FEM determinations shall be submitted in duplicate to: Director, National Exposure Research Laboratory, Reference and Equivalent Method Program (MD–D205–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (Commercial delivery address: 4930 Old Page Road, Durham, North Carolina 27703).

(b) Each application shall be signed by an authorized representative of the applicant, shall be marked in accordance with § 53.15 (if applicable), and shall contain the following:

(1) A clear identification of the candidate method, which will distinguish it from all other methods such that the method may be referred to unambiguously. This identification must consist of a unique series of descriptors such as title, identification number, analyte, measurement principle, manufacturer, brand, model, etc., as necessary to distinguish the method from all other methods or method variations, both within and outside the applicant's organization.

(2) A detailed description of the candidate method, including but not limited to the following: The measurement principle, manufacturer, name, model number and other forms of identification, a list of the significant components, schematic diagrams, design drawings, and a detailed description of the apparatus and measurement procedures. Drawings and descriptions pertaining to candidate methods or samplers for $PM_{2.5}$ or $PM_{10-2.5}$ must meet all applicable requirements in reference 1 of appendix A of this subpart, using appropriate graphical, nomenclature, and mathematical conventions such as those specified in references 3 and 4 of appendix A of this subpart.

(3) A copy of a comprehensive operation or instruction manual providing a complete and detailed description of the operational, maintenance, and calibration procedures prescribed for field use of the candidate method and all instruments utilized as part of that method (under § 53.9(a)).

(i) As a minimum this manual shall include:

(A) Description of the method and associated instruments.

(B) Explanation of all indicators, information displays, and controls.

(C) Complete setup and installation instructions, including any additional materials or supplies required.

(D) Details of all initial or startup checks or acceptance tests and any auxiliary equipment required.

(E) Complete operational instructions.

(F) Calibration procedures and descriptions of required calibration equipment and standards.

(G) Instructions for verification of correct or proper operation.

(H) Trouble-shooting guidance and suggested corrective actions for abnormal operation.

(I) Required or recommended routine, periodic, and preventative maintenance and maintenance schedules.

(J) Any calculations required to derive final concentration measurements.

(K) Appropriate references to any applicable appendix of part 50 of this chapter; reference 6 of appendix A of this subpart; and any other pertinent guidelines.

(ii) The manual shall also include adequate warning of potential safety hazards that may result from normal use and/or malfunction of the method and a description of necessary safety precautions. (See § 53.9(b).) However, the previous requirement shall not be interpreted to constitute or imply any warranty of safety of the method by EPA. For samplers and automated methods, the manual shall include a clear description of all procedures pertaining to installation, operation, preventive maintenance, and troubleshooting and shall also include parts identification diagrams. The manual may be used to satisfy the requirements of paragraphs (b)(1) and (2) of this section to the extent that it includes information necessary to meet those requirements.

(4) A statement that the candidate method has been tested in accordance with the procedures described in subparts B, C, D, E, and/or F of this part, as applicable.

(5) Descriptions of test facilities and test configurations, test data, records, calculations, and test results as specified in subparts B, C, D, E, and/or F of this part, as applicable. Data must be sufficiently detailed to meet appropriate principles described in part B, sections 3.3.1 (paragraph 1) and 3.5.1 and part C, section 4.6 of reference 2 of appendix A of this subpart; and in paragraphs 1 through 3 of section 4.8 (Records) of reference 5 of appendix A of this subpart. Salient requirements

from these references include the following:

(i) The applicant shall maintain and include records of all relevant measuring equipment, including the make, type, and serial number or other identification, and most recent calibration with identification of the measurement standard or standards used and their National Institute of Standards and Technology (NIST) traceability. These records shall demonstrate the measurement capability of each item of measuring equipment used for the application and include a description and justification (if needed) of the measurement setup or configuration in which it was used for the tests. The calibration results shall be recorded and identified in sufficient detail so that the traceability of all measurements can be determined and any measurement could be reproduced under conditions close to the original conditions, if necessary, to resolve any anomalies.

(ii) Test data shall be collected according to the standards of good practice and by qualified personnel. Test anomalies or irregularities shall be documented and explained or justified. The impact and significance of the deviation on test results and conclusions shall be determined. Data collected shall correspond directly to the specified test requirement and be labeled and identified clearly so that results can be verified and evaluated against the test requirement. Calculations or data manipulations must be explained in detail so that they can be verified.

(6) A statement that the method, analyzer, or sampler tested in accordance with this part is representative of the candidate method described in the application.

(c) For candidate automated methods and candidate manual methods for PM_{10}, $PM_{2.5}$, and $PM_{10-2.5}$ the application shall also contain the following:

(1) A detailed description of the quality system that will be utilized, if the candidate method is designated as a reference or equivalent method, to ensure that all analyzers or samplers offered for sale under that designation will have essentially the same performance characteristics as the analyzer(s) or samplers tested in accordance with this part. In addition, the quality system requirements for candidate methods for $PM_{2.5}$ and $PM_{10-2.5}$ must be described in sufficient detail, based on the elements described in section 4 of reference 1 (Quality System Requirements) of appendix A of this subpart. Further clarification is provided in the following sections of reference 2 of appendix A of this subpart: part A (Management Systems), sections 2.2 (Quality System and Description), 2.3 (Personnel Qualification and Training), 2.4 (Procurement of Items and Services), 2.5 (Documents and Records), and 2.7 (Planning); part B (Collection and Evaluation of Environmental Data), sections 3.1 (Planning and Scoping), 3.2 (Design of Data Collection Operations), and 3.5 (Assessment and Verification of Data Usability); and part C (Operation of Environmental Technology), sections 4.1 (Planning), 4.2 (Design of Systems), and 4.4 (Operation of Systems).

(2) A description of the durability characteristics of such analyzers or samplers (see § 53.9(c)). For methods for $PM_{2.5}$ and $PM_{10-2.5}$ the warranty program must ensure that the required specifications (see Table A–1 to this subpart) will be met throughout the warranty period and that the applicant accepts responsibility and liability for ensuring this conformance or for resolving any nonconformities, including all necessary components of the system, regardless of the original manufacturer. The warranty program must be described in sufficient detail to meet appropriate provisions of the ANSI/ASQC and ISO 9001 standards (references 1 and 2 in appendix A of this subpart) for controlling conformance and resolving nonconformance, particularly sections 4.12, 4.13, and 4.14 of reference 1 in appendix A of this subpart.

(i) Section 4.12 in reference 1 of appendix A of this subpart requires the manufacturer to establish and maintain a system of procedures for identifying and maintaining the identification of inspection and test status throughout all phases of manufacturing to ensure that only instruments that have passed the required inspections and tests are released for sale.

(ii) Section 4.13 in reference 1 of appendix A of this subpart requires documented procedures for control of nonconforming product, including review and acceptable alternatives for disposition; section 4.14 in reference 1 of appendix A of this subpart requires documented procedures for implementing corrective (4.14.2) and preventive (4.14.3) action to eliminate the causes of actual or potential nonconformities. In particular, section 4.14.3 requires that potential causes of nonconformities be eliminated by using information such as service reports and customer complaints to eliminate potential causes of nonconformities.

(d) For candidate reference or equivalent methods for $PM_{2.5}$ and Class II or Class III equivalent methods for $PM_{10-2.5}$, the applicant, if requested by EPA, shall provide to EPA for test purposes one sampler or analyzer that is representative of the sampler or analyzer associated with the candidate method. The sampler or analyzer shall be shipped FOB destination to Director, National Exposure Research Laboratory, Reference and Equivalent Method Program (MD-D205–03), U.S. Environmental Protection Agency, 4930 Old Page Road, Durham, North Carolina 27703, scheduled to arrive concurrent with or within 30 days of the arrival of the other application materials. This analyzer or sampler may be subjected to various tests that EPA determines to be necessary or appropriate under § 53.5(f), and such tests may include special tests not described in this part. If the instrument submitted under this paragraph malfunctions, becomes inoperative, or fails to perform as represented in the application before the necessary EPA testing is completed, the applicant shall be afforded an opportunity to repair or replace the device at no cost to EPA. Upon completion of EPA testing, the analyzer or sampler submitted under this paragraph shall be repacked by EPA for return shipment to the applicant, using the same packing materials used for shipping the instrument to EPA unless alternative packing is provided by the applicant. Arrangements for, and the cost of, return shipment shall be the responsibility of the applicant. The EPA does not warrant or assume any liability for the condition of the analyzer or sampler upon return to the applicant.

§ 53.5 Processing of applications.

After receiving an application for a FRM or FEM determination, the Administrator will, within 120 calendar days after receipt of the application, take one or more of the following actions:

(a) Send notice to the applicant, in accordance with § 53.8, that the candidate method has been determined to be a reference or equivalent method.

(b) Send notice to the applicant that the application has been rejected, including a statement of reasons for rejection.

(c) Send notice to the applicant that additional information must be submitted before a determination can be made and specify the additional information that is needed (in such cases, the 120-day period shall commence upon receipt of the additional information).

(d) Send notice to the applicant that additional test data must be submitted and specify what tests are necessary and

how the tests shall be interpreted (in such cases, the 120-day period shall commence upon receipt of the additional test data).

(e) Send notice to the applicant that the application has been found to be substantially deficient or incomplete and cannot be processed until additional information is submitted to complete the application and specify the general areas of substantial deficiency.

(f) Send notice to the applicant that additional tests will be conducted by the Administrator, specifying the nature of and reasons for the additional tests and the estimated time required (in such cases, the 120-day period shall commence 1 calendar day after the additional tests have been completed).

3. Sections 53.8 and 53.9 are revised to read as follows:

§ 53.8 Designation of reference and equivalent methods.

(a) A candidate method determined by the Administrator to satisfy the applicable requirements of this part shall be designated as a FRM or FEM (as applicable) by and upon publication of a notice of the designation in the **Federal Register**.

(b) Upon designation, a notice indicating that the method has been designated as a FRM or FEM shall be sent to the applicant.

(c) The Administrator will maintain a current list of methods designated as FRM or FEM in accordance with this part and will send a copy of the list to any person or group upon request. A copy of the list will be available for inspection or copying at EPA Regional Offices and may be available via the Internet or other sources.

§ 53.9 Conditions of designation.

Designation of a candidate method as a FRM or FEM shall be conditioned to the applicant's compliance with the following requirements. Failure to comply with any of the requirements shall constitute a ground for cancellation of the designation in accordance with § 53.11.

(a) Any method offered for sale as a FRM or FEM shall be accompanied by a copy of the manual referred to in § 53.4(b)(3) when delivered to any ultimate purchaser, and an electronic copy of the manual suitable for incorporating into user-specific standard operating procedure documents shall be readily available to any users.

(b) Any method offered for sale as a FRM or FEM shall generate no unreasonable hazard to operators or to the environment during normal use or when malfunctioning.

(c) Any analyzer, PM_{10} sampler, $PM_{2.5}$ sampler, or $PM_{10-2.5}$ sampler offered for sale as part of a FRM or FEM shall function within the limits of the performance specifications referred to in § 53.20(a), § 53.30(a), § 53.50, or § 53.60, as applicable, for at least 1 year after delivery and acceptance when maintained and operated in accordance with the manual referred to in § 53.4(b)(3).

(d) Any analyzer, PM_{10} sampler, $PM_{2.5}$ sampler, or $PM_{10-2.5}$ sampler offered for sale as a FRM or FEM shall bear a prominent, permanently affixed label or sticker indicating that the analyzer or sampler has been designated by EPA as a FRM or FEM (as applicable) in accordance with this part and displaying any designated method identification number that may be assigned by EPA.

(e) If an analyzer is offered for sale as a FRM or FEM and has one or more selectable ranges, the label or sticker required by paragraph (d) of this section shall be placed in close proximity to the range selector and shall indicate clearly which range or ranges have been designated as parts of the FRM or FEM.

(f) An applicant who offers analyzers, PM_{10} samplers, $PM_{2.5}$ samplers, or $PM_{10-2.5}$ samplers for sale as FRM or FEMs shall maintain an accurate and current list of the names and mailing addresses of all ultimate purchasers of such analyzers or samplers. For a period of 7 years after publication of the FRM or FEM designation applicable to such an analyzer or sampler, the applicant shall notify all ultimate purchasers of the analyzer or sampler within 30 days if the designation has been canceled in accordance with § 53.11 or § 53.16 or if adjustment of the analyzer or sampler is necessary under § 53.11(b).

(g) If an applicant modifies an analyzer, PM_{10} sampler, $PM_{2.5}$ sampler, or $PM_{10-2.5}$ sampler that has been designated as a FRM or FEM, the applicant shall not sell the modified analyzer or sampler as a reference or equivalent method nor attach a label or sticker to the modified analyzer or sampler under paragraph (d) or (e) of this section until the applicant has received notice under § 53.14(c) that the existing designation or a new designation will apply to the modified analyzer or sampler or has applied for and received notice under § 53.8(b) of a new FRM or FEM determination for the modified analyzer or sampler.

(h) An applicant who has offered $PM_{2.5}$ or $PM_{10-2.5}$ samplers or analyzers for sale as part of a FRM or FEM may continue to do so only so long as the facility in which the samplers or analyzers are manufactured continues to be an ISO 9001-registered facility, as set forth in subpart E of this part. In the event that the ISO 9001 registration for the facility is withdrawn, suspended, or otherwise becomes inapplicable, either permanently or for some specified time interval, such that the facility is no longer an ISO 9001-registered facility, the applicant shall notify EPA within 30 days of the date the facility becomes other than an ISO 9001-registered facility, and upon such notification, EPA shall issue a preliminary finding and notification of possible cancellation of the FRM or FEM designation under § 53.11.

(i) An applicant who has offered $PM_{2.5}$ or $PM_{10-2.5}$ samplers or analyzers for sale as part of a FRM or FEM may continue to do so only so long as updates of the Product Manufacturing Checklist set forth in subpart E of this part are submitted annually. In the event that an annual Checklist update is not received by EPA within 12 months of the date of the last such submitted Checklist or Checklist update, EPA shall notify the applicant within 30 days that the Checklist update has not been received and shall, within 30 days from the issuance of such notification, issue a preliminary finding and notification of possible cancellation of the reference or equivalent method designation under § 53.11.

4. Table A–1 to subpart A of part 53 is revised to read as follows:

TABLE A–1 TO SUBPART A OF PART 53.—SUMMARY OF APPLICABLE REQUIREMENTS FOR REFERENCE AND EQUIVALENT METHODS FOR AIR MONITORING OF CRITERIA POLLUTANTS.

Pollutant	Ref. or equivalent	Manual or automated	Applicable part 50 appendix	Applicable subparts of part 53					
				A	B	C	D	E	F
SO_2	Reference	Manual	A						
	Equivalent	Manual		✓		✓			

TABLE A–1 TO SUBPART A OF PART 53.—SUMMARY OF APPLICABLE REQUIREMENTS FOR REFERENCE AND EQUIVALENT METHODS FOR AIR MONITORING OF CRITERIA POLLUTANTS.—Continued

Pollutant	Ref. or equivalent	Manual or automated	Applicable part 50 appendix	Applicable subparts of part 53					
				A	B	C	D	E	F
		Automated		✓	✓	✓			
CO	Reference	Automated	C	✓	✓				
	Equivalent	Manual		✓		✓			
		Automated		✓	✓	✓			
O_3	Reference	Automated	D	✓	✓				
	Equivalent	Manual		✓		✓			
		Automated		✓	✓	✓			
NO_2	Reference	Automated	F	✓	✓				
	Equivalent	Manual		✓		✓			
		Automated		✓	✓	✓			
Pb	Reference	Manual	G						
	Equivalent	Manual		✓		✓			
PM_{10}	Reference	Manual	J	✓			✓		
	Equivalent	Manual		✓		✓	✓		
		Automated		✓		✓	✓		
$PM_{2.5}$	Reference	Manual	L	✓				✓	
	Equivalent Class I	Manual	L	✓		✓		✓	
	Equivalent Class II	Manual	L[1]	✓		✓[2]		✓	✓[1,2]
	Equivalent Class III	Automated	L[1]	✓		✓		✓[1]	✓[1]
$PM_{10-2.5}$	Reference	Manual	O[2]	✓				✓	
	Equivalent Class I	Manual	O_2	✓				✓	
	Equivalent Class II	Manual	O[2]	✓		✓[2]		✓[1]	✓[1, 2]
	Equivalent Class III	Automated	L[1],O[1, 2]	✓		✓		✓[1]	✓[1]

[1] Some requirements may apply, based on the nature of each particular candidate method, as determined by the Administrator.
[2] Alternative Class III requirements may be substituted.

■ 5. Paragraphs (1), (2), and (6) of appendix A to subpart A of part 53 are revised to read as follows:

Appendix A to Subpart A of Part 53—References

(1) American National Standard Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, ANSI/ISO/ASQC Q9001–1994. Available from American Society for Quality, P.O. Box 3005, Milwaukee, WI 53202 (*http://qualitypress.asq.org*).

(2) American National Standard Quality Systems for Environmental Data and Technology Programs—Requirements with guidance for use, ANSI/ASQC E4–2004. Available from American Society for Quality P.O. Box 3005, Milwaukee, WI 53202 (*http://qualitypress.asq.org*).

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(6) Quality Assurance Guidance Document 2.12. Monitoring $PM_{2.5}$ in Ambient Air Using Designated Reference or Class I Equivalent Methods. U.S. EPA, National Exposure Research Laboratory, Research Triangle Park, NC, November 1998 or later edition. Currently available at *http://www.epa.gov/ttn/amtic/pmqainf.html.*

■ 6. Subpart C is revised to read as follows:

Sec.

Subpart C—Procedures for Determining Comparability Between Candidate Methods and Reference Methods

53.30 General provisions.
53.31 [Reserved]
53.32 Test procedures for methods for SO_2, CO, O_3, and NO_2.
53.33 Test procedure for methods for Pb.
53.34 Test procedures for methods for PM_{10} and Class I methods for $PM_{2.5}$.
53.35 Test procedures for Class II and Class III methods for $PM_{2.5}$ and $PM_{10-2.5}$.

Tables to Subpart C of Part 53

Table C–1 to Subpart C of Part 53—Test Concentration Ranges, Number of Measurements Required, and Maximum Discrepancy Specification

Table C–2 to Subpart C of Part 53—Sequence of Test Measurements

Table C–3 to Subpart C of Part 53—Test Specifications for Pb Methods

Table C–4 to Subpart C of Part 53—Test Specifications for PM_{10}, $PM_{2.5}$, and $PM_{10-2.5}$ Candidate Equivalent Methods

Table C–5 to Subpart C of Part 53—Summary of Comparability Field Testing Campaign Site and Seasonal Requirements for Class II and III FEMs for $PM_{10-2.5}$ and $PM_{2.5}$

Figures to Subpart C of Part 53

Figure C–1 to Subpart C of Part 53—Suggested Format for Reporting Test Results for Methods for SO_2, CO, O_3, NO_2

Figure C–2 to Subpart C of Part 53—Illustration of the Slope and Intercept Limits for Class II and Class III $PM_{2.5}$ Candidate Equivalent Methods

Figure C–3 to Subpart C of Part 53—Illustration of the Slope and Intercept Limits for Class II and Class III $PM_{10-2.5}$ Candidate Equivalent Methods

Figure C–4 to Subpart C of Part 53—Illustration of the Minimum Limits for Correlation Coefficient for $PM_{2.5}$ and $PM_{10-2.5}$ Class II and III Methods

Appendix to Subpart C of Part 53

Appendix A to Subpart C of Part 53—References

Subpart C—Procedures for Determining Comparability Between Candidate Methods and Reference Methods

§ 53.30 General provisions.

(a) *Determination of comparability.* The test procedures prescribed in this subpart shall be used to determine if a candidate method is comparable to a reference method when both methods measure pollutant concentrations in ambient air. Minor deviations in testing requirements and acceptance requirements set forth in this subpart, in connection with any documented extenuating circumstances, may be determined by the Administrator to be acceptable, at the discretion of the Administrator.

(b) *Selection of test sites.* (1) Each test site shall be in an area which can be shown to have at least moderate concentrations of various pollutants. Each site shall be clearly identified and shall be justified as an appropriate test site with suitable supporting evidence such as a description of the surrounding area, characterization of the sources and pollutants typical in the area, maps, population density data, vehicular traffic data, emission inventories, pollutant measurements from previous years, concurrent pollutant measurements, meteorological data, and other information useful in supporting the suitability of the site for the comparison test or tests.

(2) If approval of one or more proposed test sites is desired prior to conducting the tests, a written request for approval of the test site or sites must be submitted to the address given in § 53.4. The request should include information identifying the type of candidate method and one or more specific proposed test sites along with a justification for each proposed specific site as described in paragraph (b)(1) of this section. The EPA will evaluate each proposed site and approve the site, disapprove the site, or request more information about the site. Any such pre-test approval of a test site by the EPA shall indicate only that the site meets the applicable test site requirements for the candidate method type; it shall not indicate, suggest, or imply that test data obtained at the site will necessarily meet any of the applicable data acceptance requirements. The Administrator may exercise discretion in selecting a different site (or sites) for any additional tests the Administrator decides to conduct.

(c) *Test atmosphere.* Ambient air sampled at an appropriate test site or sites shall be used for these tests. Simultaneous concentration measurements shall be made in each of the concentration ranges specified in tables C–1, C–3, or C–4 of this subpart, as appropriate.

(d) *Sampling or sample collection.* All test concentration measurements or samples shall be taken in such a way that both the candidate method and the reference method obtain air samples that are alike or as nearly identical as practical.

(e) *Operation.* Set-up and start-up of the test analyzer(s), test sampler(s), and reference method analyzers or samplers shall be in strict accordance with the applicable operation manual(s).

(f) *Calibration.* The reference method shall be calibrated according to the appropriate appendix to part 50 of this chapter (if it is a manual method) or according to the applicable operation manual(s) (if it is an automated method). A candidate method (or portion thereof) shall be calibrated according to the applicable operation

manual(s), if such calibration is a part of the method.

(g) *Submission of test data and other information.* All recorder charts, calibration data, records, test results, procedural descriptions and details, and other documentation obtained from (or pertinent to) these tests shall be identified, dated, signed by the analyst performing the test, and submitted. For candidate methods for $PM_{2.5}$ and $PM_{10-2.5}$, all submitted information must meet the requirements of the ANSI/ASQC E4 Standard, sections 6 (reference 1 of appendix A of this subpart).

§ 53.31 [Reserved]

§ 53.32 Test procedures for methods for SO_2, CO, O_3, and NO_2.

(a) *Comparability.* Comparability is shown for SO_2, CO, O_3, and NO_2 methods when the differences between:

(1) Measurements made by a candidate manual method or by a test analyzer representative of a candidate automated method, and;

(2) Measurements made simultaneously by a reference method are less than or equal to the values for maximum discrepancy specified in table C–1 of this subpart.

(b) *Test measurements.* All test measurements are to be made at the same test site. If necessary, the concentration of pollutant in the sampled ambient air may be augmented with artificially generated pollutant to facilitate measurements in the specified ranges, as described under paragraph (f)(4) of this section.

(c) *Requirements for measurements or samples.* All test measurements made or test samples collected by means of a sample manifold as specified in paragraph (f)(4) of this section shall be at a room temperature between 20° and 30° C, and at a line voltage between 105 and 125 volts. All methods shall be calibrated as specified in § 53.30(f) prior to initiation of the tests.

(d) *Set-up and start-up.* (1) Set-up and start-up of the test analyzer, test sampler(s), and reference method shall be in strict accordance with the applicable operation manual(s). If the test analyzer does not have an integral strip chart or digital data recorder, connect the analyzer output to a suitable strip chart or digital data recorder. This recorder shall have a chart width of at least 25 centimeters, a response time of 1 second or less, a deadband of not more than 0.25 percent of full scale, and capability of either reading measurements at least 5 percent below zero or offsetting the zero by at least 5 percent. Digital data shall be recorded at appropriate time intervals such that trend plots similar to a strip chart recording may be constructed with a similar or suitable level of detail.

(2) Other data acquisition components may be used along with the chart recorder during the conduct of these tests. Use of the chart recorder is intended only to facilitate visual evaluation of data submitted.

(3) Allow adequate warmup or stabilization time as indicated in the applicable operation manual(s) before beginning the tests.

(e) *Range.* (1) Except as provided in paragraph (e)(2) of this section, each method shall be operated in the range specified for the reference method in the appropriate appendix to part 50 of this chapter (for manual reference methods), or specified in table B–1 of subpart B of this part (for automated reference methods).

(2) For a candidate method having more than one selectable range, one range must be that specified in table B–1 of subpart B of this part, and a test analyzer representative of the method must pass the tests required by this subpart while operated on that range. The tests may be repeated for a broader range (i.e., one extending to higher concentrations) than the one specified in table B–1 of subpart B of this part, provided that the range does not extend to concentrations more than two times the upper range limit specified in table B–1 of subpart B of this part and that the test analyzer has passed the tests required by subpart B of this part (if applicable) for the broader range. If the tests required by this subpart are conducted or passed only for the range specified in table B–1 of subpart B of this part, any equivalent method determination with respect to the method will be limited to that range. If the tests are passed for both the specified range and a broader range (or ranges), any such determination will include the broader range(s) as well as the specified range. Appropriate test data shall be submitted for each range sought to be included in such a determination.

(f) *Operation of automated methods.* (1) Once the test analyzer has been set up and calibrated and tests started, manual adjustment or normal periodic maintenance, as specified in the manual referred to in § 53.4(b)(3), is permitted only every 3 days. Automatic adjustments which the test analyzer performs by itself are permitted at any time. The submitted records shall show clearly when manual adjustments were made and describe the operations performed.

(2) All test measurements shall be made with the same test analyzer; use of multiple test analyzers is not permitted. The test analyzer shall be operated continuously during the entire series of test measurements.

(3) If a test analyzer should malfunction during any of these tests, the entire set of measurements shall be repeated, and a detailed explanation of the malfunction, remedial action taken, and whether recalibration was necessary (along with all pertinent records and charts) shall be submitted.

(4) Ambient air shall be sampled from a common intake and distribution manifold designed to deliver homogenous air samples to both methods. Precautions shall be taken in the design and construction of this manifold to minimize the removal of particulate matter and trace gases, and to insure that identical samples reach the two methods. If necessary, the concentration of pollutant in the sampled ambient air may be augmented with artificially generated pollutant. However, at all times the air sample measured by the candidate and reference methods under test shall consist of not less than 80 percent ambient air by volume. Schematic drawings, physical illustrations, descriptions, and complete details of the manifold system and the augmentation system (if used) shall be submitted.

(g) *Tests.* (1) Conduct the first set of simultaneous measurements with the candidate and reference methods:

(i) Table C–1 of this subpart specifies the type (1-or 24-hour) and number of measurements to be made in each of the three test concentration ranges.

(ii) The pollutant concentration must fall within the specified range as measured by the reference method.

(iii) The measurements shall be made in the sequence specified in table C–2 of this subpart, except for the 1-hour SO_2 measurements, which are all in the high range.

(2) For each pair of measurements, determine the difference (discrepancy) between the candidate method measurement and reference method measurement. A discrepancy which exceeds the discrepancy specified in table C–1 of this subpart constitutes a failure. Figure C–1 of this subpart contains a suggested format for reporting the test results.

(3) The results of the first set of measurements shall be interpreted as follows:

(i) Zero failures: The candidate method passes the test for comparability.

(ii) Three or more failures: The candidate method fails the test for comparability.

(iii) One or two failures: Conduct a second set of simultaneous measurements as specified in table C–1 of this subpart. The results of the combined total of first-set and second-set measurements shall be interpreted as follows:

(A) One or two failures: The candidate method passes the test for comparability.

(B) Three or more failures: The candidate method fails the test for comparability.

(iv) For SO_2, the 1-hour and 24-hour measurements shall be interpreted separately, and the candidate method must pass the tests for both 1- and 24-hour measurements to pass the test for comparability.

(4) A 1-hour measurement consists of the integral of the instantaneous concentration over a 60-minute continuous period divided by the time period. Integration of the instantaneous concentration may be performed by any appropriate means such as chemical, electronic, mechanical, visual judgment, or by calculating the mean of not less than 12 equally-spaced instantaneous readings. Appropriate allowances or corrections shall be made in cases where significant errors could occur due to characteristic lag time or rise/fall time differences between the candidate and reference methods. Details of the means of integration and any corrections shall be submitted.

(5) A 24-hour measurement consists of the integral of the instantaneous concentration over a 24-hour continuous period divided by the time period. This integration may be performed by any appropriate means such as chemical, electronic, mechanical, or by calculating the mean of twenty-four (24) sequential 1-hour measurements.

(6) For O_3 and CO, no more than six 1-hour measurements shall be made per day. For SO_2, no more than four 1-hour measurements or one 24-hour measurement shall be made per day. One-hour measurements may be made concurrently with 24-hour measurements if appropriate.

(7) For applicable methods, control or calibration checks may be performed once per day without adjusting the test analyzer or method. These checks may be used as a basis for a linear interpolation-type correction to be applied to the measurements to correct for drift. If such a correction is used, it shall be applied to all measurements made with the method, and the correction procedure shall become a part of the method.

§ 53.33 Test procedure for methods for Pb.

(a) *Comparability.* Comparability is shown for Pb methods when the differences between:

(1) Measurements made by a candidate method, and

(2) Measurements made by the reference method on simultaneously collected Pb samples (or the same sample, if applicable), are less than or equal to the value specified in table C–3 of this subpart.

(b) *Test measurements.* Test measurements may be made at any number of test sites. Augmentation of pollutant concentrations is not permitted, hence an appropriate test site or sites must be selected to provide Pb concentrations in the specified range.

(c) *Collocated samplers.* The ambient air intake points of all the candidate and reference method collocated samplers shall be positioned at the same height above the ground level, and between 2 meters (1 meter for samplers with flow rates less than 200 liters per minute (L/min)) and 4 meters apart. The samplers shall be oriented in a manner that will minimize spatial and wind directional effects on sample collection.

(d) *Sample collection.* Collect simultaneous 24-hour samples (filters) of Pb at the test site or sites with both the reference and candidate methods until at least 10 filter pairs have been obtained. A candidate method which employs a sampler and sample collection procedure that are identical to the sampler and sample collection procedure specified in the reference method, but uses a different analytical procedure, may be tested by analyzing common samples. The common samples shall be collected according to the sample collection procedure specified by the reference method and each shall be divided for respective analysis in accordance with the analytical procedures of the candidate method and the reference method.

(e) *Audit samples.* Three audit samples must be obtained from the address given in § 53.4(a). The audit samples are ¾ × 8-inch glass fiber strips containing known amounts of Pb at the following nominal levels: 100 micrograms per strip (µg/strip); 300 µg/strip; 750 µg/strip. The true amount of Pb, in total µg/strip, will be provided with each audit sample.

(f) *Filter analysis.* (1) For both the reference method samples and the audit samples, analyze each filter extract three times in accordance with the reference method analytical procedure. The analysis of replicates should not be performed sequentially, i.e., a single sample should not be analyzed three times in sequence. Calculate the indicated Pb concentrations for the reference method samples in micrograms per cubic meter (µg/m^3) for each analysis of each filter. Calculate the indicated total Pb amount for the audit samples in µg/strip for each analysis of each strip. Label these test results as R_{1A}, R_{1B}, R_{1C}, R_{2A}, R_{2B}, * * *, Q_{1A}, Q_{1B}, Q_{1C}, * * *, where R denotes results from the reference method samples; Q denotes results from the audit samples; 1, 2, 3 indicate the filter number, and A, B, C indicate the first, second, and third analysis of each filter, respectively.

(2) For the candidate method samples, analyze each sample filter or filter extract three times and calculate, in accordance with the candidate method, the indicated Pb concentration in µg/m^3 for each analysis of each filter. Label these test results as C_{1A}, C_{1B}, C_{2C}, * * *, where C denotes results from the candidate method. For candidate methods which provide a direct measurement of Pb concentrations without a separable procedure, $C_{1A}=C_{1B}=C_{1C}$, $C_{2A}=C_{2B}=C_{2C}$, etc.

(g) *Average Pb concentration.* For the reference method, calculate the average Pb concentration for each filter by averaging the concentrations calculated from the three analyses using equation 1 of this section:

Equation 1

$$R_{i\,ave} = \frac{R_{iA} + R_{iB} + R_{iC}}{3}$$

Where, i is the filter number.

(h) *Accuracy.* (1)(i) For the audit samples, calculate the average Pb concentration for each strip by averaging the concentrations calculated from the three analyses using equation 2 of this section:

Equation 2

$$Q_{i\,ave} = \frac{Q_{iA} + Q_{iB} + Q_{iC}}{3}$$

Where, i is audit sample number.

(ii) Calculate the percent difference (D_q) between the indicated Pb concentration for each audit sample and the true Pb concentration (T_q) using equation 3 of this section:

Equation 3

$$D_{qi} = \frac{Q_{i\,ave} - T_{qi}}{T_{qi}} \times 100\%$$

(2) If any difference value (D_{qi}) exceeds ±5 percent, the accuracy of the

reference method analytical procedure is out-of-control. Corrective action must be taken to determine the source of the error(s) (e.g., calibration standard discrepancies, extraction problems, etc.) and the reference method and audit sample determinations must be repeated according to paragraph (f) of this section, or the entire test procedure (starting with paragraph (d) of this section) must be repeated.

(i) *Acceptable filter pairs.* Disregard all filter pairs for which the Pb concentration, as determined in paragraph (g) of this section by the average of the three reference method determinations, falls outside the range of 0.5 to 4.0 μg/m³. All remaining filter pairs must be subjected to the tests for precision and comparability in paragraphs (j) and (k) of this section. At least five filter pairs must be within the 0.5 to 4.0 μg/m³ range for the tests to be valid.

(j) *Test for precision.* (1) Calculate the precision (P) of the analysis (in percent) for each filter and for each method, as the maximum minus the minimum divided by the average of the three concentration values, using equation 4 or equation 5 of this section:

Equation 4

$$P_{Ri} = \frac{R_{i\,max} - R_{i\,min}}{R_{i\,ave}} \times 100\%$$

or

Equation 5

$$P_{Ci} = \frac{C_{i\,max} - C_{i\,min}}{C_{i\,ave}} \times 100\%$$

where, i indicates the filter number.

(2) If any reference method precision value (P_{Ri}) exceeds 15 percent, the precision of the reference method analytical procedure is out-of-control. Corrective action must be taken to determine the source(s) of imprecision, and the reference method determinations must be repeated according to paragraph (f) of this section, or the entire test procedure (starting with paragraph (d) of this section) must be repeated.

(3) If any candidate method precision value (P_{Ci}) exceeds 15 percent, the candidate method fails the precision test.

(4) The candidate method passes this test if all precision values (i.e., all P_{Ri}'s and all P_{Ci}'s) are less than 15 percent.

(k) *Test for comparability.* (1) For each filter or analytical sample pair, calculate all nine possible percent differences (D) between the reference and candidate methods, using all nine possible combinations of the three determinations (A, B, and C) for each method using equation 6 of this section:

Equation 6

$$D_{in} = \frac{C_{ij} - R_{ik}}{R_{ik}} \times 100\%$$

where, i is the filter number, and n numbers from 1 to 9 for the nine possible difference combinations for the three determinations for each method (j = A, B, C, candidate; k = A, B, C, reference).

(2) If none of the percent differences (D) exceeds ±20 percent, the candidate method passes the test for comparability.

(3) If one or more of the percent differences (D) exceed ±20 percent, the candidate method fails the test for comparability.

(4) The candidate method must pass both the precision test (paragraph (j) of this section) and the comparability test (paragraph (k) of this section) to qualify for designation as an equivalent method.

§ 53.34 Test procedure for methods for PM_{10} and Class I methods for $PM_{2.5}$.

(a) *Comparability.* Comparability is shown for PM_{10} methods and for Class I methods for $PM_{2.5}$ when the relationship between:

(1) Measurements made by a candidate method, and

(2) Measurements made by a corresponding reference method on simultaneously collected samples (or the same sample, if applicable) at each of one or more test sites (as required) is such that the linear regression parameters (slope, intercept, and correlation coefficient) describing the relationship meet the requirements specified in table C–4 of this subpart.

(b) *Methods for PM_{10}.* Test measurements must be made, or derived from particulate samples collected, at not less than two test sites, each of which must be located in a geographical area characterized by ambient particulate matter that is significantly different in nature and composition from that at the other test site(s). Augmentation of pollutant concentrations is not permitted, hence appropriate test sites must be selected to provide the minimum number of test PM_{10} concentrations in the ranges specified in table C–4 of this subpart. The tests at the two sites may be conducted in different calendar seasons, if appropriate, to provide PM_{10} concentrations in the specified ranges.

(c) *PM_{10} methods employing the same sampling procedure as the reference method but a different analytical method.* Candidate methods for PM_{10} which employ a sampler and sample collection procedure that are identical to the sampler and sample collection procedure specified in the reference method, but use a different analytical procedure, may be tested by analyzing common samples. The common samples shall be collected according to the sample collection procedure specified by the reference method and shall be analyzed in accordance with the analytical procedures of both the candidate method and the reference method.

(d) *Methods for $PM_{2.5}$.* Augmentation of pollutant concentrations is not permitted, hence appropriate test sites must be selected to provide the minimum number of test measurement sets to meet the requirements for $PM_{2.5}$ concentrations in the ranges specified in table C–4 of this subpart. Only one test site is required, and the site need only meet the $PM_{2.5}$ ambient concentration levels required by table C–4 of this subpart and the requirements of § 53.30(b) of this subpart. A total of 10 valid measurement sets is required.

(e) *Collocated measurements.* (1) Set up three reference method samplers collocated with three candidate method samplers or analyzers at each of the number of test sites specified in table C–4 of this subpart.

(2) The ambient air intake points of all the candidate and reference method collocated samplers or analyzers shall be positioned at the same height above the ground level, and between 2 meters (1 meter for samplers or analyzers with flow rates less than 200 L/min) and 4 meters apart. The samplers shall be oriented in a manner that will minimize spatial and wind directional effects on sample collection.

(3) At each site, obtain as many sets of simultaneous PM_{10} or $PM_{2.5}$ measurements as necessary (see table C–4 of this subpart), each set consisting of three reference method and three candidate method measurements, all obtained simultaneously.

(4) Candidate PM_{10} method measurements shall be nominal 24-hour (±1 hour) integrated measurements or shall be averaged to obtain the mean concentration for a nominal 24-hour period. $PM_{2.5}$ measurements may be either nominal 24-or 48-hour integrated measurements. All collocated measurements in a measurement set must cover the same nominal 24-or 48-hour time period.

(5) For samplers, retrieve the samples promptly after sample collection and analyze each sample according to the reference method or candidate method, as appropriate, and determine the PM_{10} or $PM_{2.5}$ concentration in μg/m³. If the conditions of paragraph (c) of this section apply, collect sample sets only

with the three reference method samplers. Guidance for quality assurance procedures for $PM_{2.5}$ methods is found in ''Quality Assurance Document 2.12'' (reference (2) in appendix A to this subpart).

(f) *Sequential samplers.* For sequential samplers, the sampler shall be configured for the maximum number of sequential samples and shall be set for automatic collection of all samples sequentially such that the test samples are collected equally, to the extent possible, among all available sequential channels or utilizing the full available sequential capability.

(g) *Calculation of reference method averages and precisions.* (1) For each of the measurement sets, calculate the average PM_{10} or $PM_{2.5}$ concentration obtained with the reference method samplers, using equation 7 of this section:

Equation 7

$$\bar{R}_j = \frac{\sum_{i=1}^{3} R_{i,j}}{3}$$

Where:
R = The concentration measurements from the reference methods;
i = The sampler number; and
j = The measurement set number.

(2) For each of the measurement sets, calculate the precision of the reference method PM_{10} or $PM_{2.5}$ measurements as the standard deviation, P_{Rj}, using equation 8 of this section:

Equation 8

$$P_{Rj} = \sqrt{\frac{\sum_{i=1}^{3} R_{i,j}^2 - \frac{1}{3}\left(\sum_{i=1}^{3} R_{i,j}\right)^2}{2}}$$

(3) For each measurement set, also calculate the precision of the reference method PM_{10} or $PM_{2.5}$ measurements as the relative standard deviation, RP_{Rj}, in percent, using equation 9 of this section:

Equation 9

$$RP_{Rj} \frac{P_{Rj}}{R_j} \times 100\%$$

(h) *Acceptability of measurement sets.* Each measurement set is acceptable and valid only if the three reference method measurements and the three candidate method measurements are obtained and are valid, $\bar{R}_j$ falls within the acceptable concentration range specified in table C–4 of this subpart, and either P_{Rj} or RP_{Rj} is within the corresponding limit for reference method precision specified in table C–4 of this subpart. For each site, table C–4 of this subpart specifies the minimum number of measurement sets required having $\bar{R}_j$ above and below specified concentrations for 24- or 48-hour samples. Additional measurement sets shall be obtained, as necessary, to provide the minimum number of acceptable measurement sets for each category and the minimum total number of acceptable measurement sets for each test site. If more than the minimum number of measurement sets are collected that meet the acceptability criteria, all such measurement sets shall be used to demonstrate comparability.

(i) *Candidate method average concentration measurement.* For each of the acceptable measurement sets, calculate the average PM_{10} or $PM_{2.5}$ concentration measurements obtained with the candidate method samplers, using equation 10 of this section:

Equation 10

$$\bar{C}_j = \frac{\sum_{i=1}^{3} C_{i,j}}{3}$$

Where:
C = The concentration measurements from the candidate methods;
i = The measurement number in the set; and
j = The measurement set number.

(j) *Test for comparability.* (1) For each site, plot all of the average PM_{10} or $PM_{2.5}$ measurements obtained with the candidate method ($\bar{C}_j$) against the corresponding average PM_{10} or $PM_{2.5}$ measurements obtained with the reference method ($\bar{R}_j$. For each site, calculate and record the linear regression slope and intercept, and the correlation coefficient.

(2) To pass the test for comparability, the slope, intercept, and correlation coefficient calculated under paragraph (j)(1) of this section must be within the limits specified in table C–4 of this subpart for all test sites.

§ 53.35 Test procedure for Class II and Class III methods for $PM_{2.5}$ and $PM_{10-2.5}$.

(a) *Overview.* Class II and Class III candidate equivalent methods shall be tested for comparability of $PM_{2.5}$ or $PM_{10-2.5}$ measurements to corresponding collocated $PM_{2.5}$ or $PM_{10-2.5}$ reference method measurements at each of multiple field sites, as required. Comparability is shown for the candidate method when simultaneous collocated measurements made by candidate and reference methods meet the comparability requirements specified in this section § 53.35 and in table C–4 of this subpart at each of the required test sites.

(b) *Test sites and seasons.* A summary of the test site and seasonal testing requirements is presented in table C–5 of this subpart.

(1) *Test sites.* Comparability testing is required at each of the applicable U.S. test sites required by this paragraph (b). Each test site must also meet the general test site requirements specified in § 53.30(b).

(i) *$PM_{2.5}$ Class II and Class III candidate methods.* Test sites should be chosen to provide representative chemical and meteorological characteristics with respect to nitrates, sulfates, organic compounds, and various levels of temperature, humidity, wind, and elevation. For Class III methods, one test site shall be selected in each of the following four general locations (A, B, C, and D). For Class II methods, two test sites, one western site (A or B) and one midwestern or eastern site (C or D), shall be selected from these locations.

(A) Test site A shall be in the Los Angeles basin or California Central Valley area in a location that is characterized by relatively high $PM_{2.5}$, nitrates, and semi-volatile organic pollutants.

(B) Test site B shall be in a western city such as Denver, Salt Lake City, or Albuquerque in an area characterized by cold weather, higher elevation, winds, and dust.

(C) Test site C shall be in a midwestern city characterized by substantial temperature variation, high nitrates, and wintertime conditions.

(D) Test site D shall be in a northeastern or mid-Atlantic city that is seasonally characterized by high sulfate concentrations and high relative humidity.

(ii) *$PM_{10-2.5}$ Class II and Class III candidate methods.* Test sites shall be chosen to provide modest to high levels of $PM_{10-2.5}$ representative of locations in proximity to urban sources of $PM_{10-2.5}$ such as high-density traffic on paved roads, industrial sources, and construction activities. For Class III methods, one test site shall be selected in each of the four following general locations (A, B, C, and D), and at least one of the test sites shall have characteristic wintertime temperatures of 0° C or lower. For Class II methods, two test sites, one western site (A or B) and one midwestern or eastern site (C or D), shall be selected from these locations.

(A) Test site A shall be in the Los Angeles basin or the California Central Valley area in a location that is characterized by relatively high $PM_{2.5}$, nitrates, and semi-volatile organic pollutants.

(B) Test site B shall be in a western city characterized by a high ratio of $PM_{10-2.5}$ to $PM_{2.5}$, with exposure to windblown dust, such as Las Vegas or Phoenix.

(C) Test site C shall be in a midwestern city characterized by substantial temperature variation, high nitrates, and wintertime conditions.

(D) Test site D shall be in a large city east of the Mississippi River, having characteristically high sulfate concentrations and high humidity levels.

(2) *Test seasons.* (i) For $PM_{2.5}$ and $PM_{10-2.5}$ Class III candidate methods, test campaigns are required in both summer and winter seasons at test site A, in the winter season only at test sites B and C, and in the summer season only at test site D. (A total of five test campaigns is required.) The summer season shall be defined as the typically warmest three or four months of the year at the site; the winter season shall be defined as the typically coolest three or four months of the year at the site.

(ii) For Class II $PM_{2.5}$ and $PM_{10-2.5}$ candidate methods, one test campaign is required at test site A or B and a second test campaign at test site C or D (total of two test campaigns).

(3) *Test concentrations.* The test sites should be selected to provide ambient concentrations within the concentration limits specified in table C–4 of this subpart, and also to provide a wide range of test concentrations. A narrow range of test concentrations may result in a low concentration coefficient of variation statistic for the test measurements, making the test for correlation coefficient more difficult to pass (see paragraph (h) of this section, test for comparison correlation).

(4) *Pre-approval of test sites.* The EPA recommends that the applicant seek EPA approval of each proposed test site prior to conducting test measurements at the site. To do so, the applicant should submit a request for approval as described in § 53.30(b)(2).

(c) *Collocated measurements.* (1) For each test campaign, three reference method samplers and three candidate method samplers or analyzers shall be installed and operated concurrently at each test site within each required season (if applicable), as specified in paragraph (b) of this section. All reference method samplers shall be of single-filter design (not multi-filter, sequential sample design). Each candidate method shall be setup and operated in accordance with its associated manual referred to in § 53.4(b)(3) and in accordance with applicable guidance in ''Quality Assurance Document 2.12'' (reference (2) in appendix A to this subpart). All samplers or analyzers shall be placed so that they sample or measure air representative of the surrounding area (within one kilometer) and are not unduly affected by adjacent buildings, air handling equipment, industrial operations, traffic, or other local influences. The ambient air inlet points of all samplers and analyzers shall be positioned at the same height above the ground level and between 2 meters (1 meter for instruments having sample inlet flow rates less than 200 L/min) and 4 meters apart.

(2) A minimum of 23 valid and acceptable measurement sets of $PM_{2.5}$ or $PM_{10-2.5}$ 24-hour (nominal) concurrent concentration measurements shall be obtained during each test campaign at each test site. To be considered acceptable for the test, each measurement set shall consist of at least two valid reference method measurements and at least two valid candidate method measurements, and the $PM_{2.5}$ or $PM_{10-2.5}$ measured concentration, as determined by the average of the reference method measurements, must fall within the acceptable concentration range specified in table C–4 of this subpart. Each measurement set shall include all valid measurements obtained. For each measurement set containing fewer than three reference method measurements or fewer than three candidate method measurements, an explanation and appropriate justification shall be provided to account for the missing measurement or measurements.

(3) More than 23 valid measurement sets may be obtained during a particular test campaign to provide a more advantageous range of concentrations, more representative conditions, additional higher or lower measurements, or to otherwise improve the comparison of the methods. All valid data sets obtained during each test campaign shall be submitted and shall be included in the analysis of the data.

(4) The integrated-sample reference method measurements shall be of at least 22 hours and not more than 25 hours duration. Each reference method sample shall be retrieved promptly after sample collection and analyzed according to the reference method to determine the $PM_{2.5}$ or $PM_{10-2.5}$ measured concentration in $\mu g/m^3$. Guidance and quality assurance procedures applicable to $PM_{2.5}$ or $PM_{10-2.5}$ reference methods are found in ''Quality Assurance Document 2.12'' (reference (2) in appendix A to this subpart).

(5) Candidate method measurements shall be timed or processed and averaged as appropriate to determine an equivalent mean concentration representative of the same time period as that of the concurrent integrated-sample reference method measurements, such that all measurements in a measurement set shall be representative of the same time period. In addition, hourly average concentration measurements shall be obtained from each of the Class III candidate method analyzers for each valid measurement set and submitted as part of the application records.

(6) In the following tests, all measurement sets obtained at a particular test site, from both seasonal campaigns if applicable, shall be combined and included in the test data analysis for the site. Data obtained at different test sites shall be analyzed separately. All measurements should be reported as normally obtained, and no measurement values should be rounded or truncated prior to data analysis. In particular, no negative measurement value, if otherwise apparently valid, should be modified, adjusted, replaced, or eliminated merely because its value is negative. Calculated mean concentrations or calculated intermediate quantities should retain at least one order-of-magnitude greater resolution than the input values. All measurement data and calculations shall be recorded and submitted in accordance with § 53.30(g), including hourly test measurements obtained from Class III candidate methods.

(d) *Calculation of mean concentrations*—(1) *Reference method outlier test.* For each of the measurement sets for each test site, check each reference method measurement to see if it might be an anomalous value (outlier) as follows, where $R_{i,j}$ is the measurement of reference method sampler i on test day j. In the event that one of the reference method measurements is missing or invalid due to a specific, positively-identified physical cause (e.g., sampler malfunction, operator error, accidental damage to the filter, etc.; see paragraph (c)(2) of this section), then substitute zero for the missing measurement, *for the purposes of this outlier test only.*

(i) Calculate the quantities $2 \times R_{1,j}/(R_{1,j} + R_{2,j})$ and $2 \times R_{1,j}/(R_{1,j} + R_{3,j})$. If both quantities fall outside of the interval, (0.93, 1.07), then $R_{1,j}$ is an outlier.

(ii) Calculate the quantities $2 \times R_{2,j}/(R_{2,j} + R_{1,j})$ and $2 \times R_{2,j}/(R_{2,j} + R_{3,j})$. If both quantities fall outside of the interval, (0.93, 1.07), then $R_{2,j}$ is an outlier.

(iii) Calculate the quantities $2 \times R_{3,j}/(R_{3,j} + R_{1,j})$ and $2 \times R_{3,j}/(R_{3,j} + R_{2,j})$. If both quantities fall outside of the

interval, (0.93, 1.07), then $R_{3,j}$ is an outlier.

(iv) If this test indicates that one of the reference method measurements in the measurement set is an outlier, the outlier measurement shall be eliminated from the measurement set, and the other two measurements considered valid. If the test indicates that more than one reference method measurement in the measurement set is an outlier, the entire measurement set (both reference and candidate method measurements) shall be excluded from further data analysis for the tests of this section.

(2) For each of the measurement sets for each test site, calculate the mean concentration for the reference method measurements, using equation 11 of this section:

Equation 11

$$\bar{R}_j = \frac{1}{n}\sum_{i=1}^{n} R_{i,j}$$

Where:

$\bar{R}_j$ = The mean concentration measured by the reference method for the measurement set;

$R_{i,j}$ = The measurement of reference method sampler i on test day j; and

n = The number of valid reference method measurements in the measurement set (normally 3).

(3) Any measurement set for which $\bar{R}_j$ does not fall in the acceptable concentration range specified in table C–4 of this subpart is not valid, and the entire measurement set (both reference and candidate method measurements) must be eliminated from further data analysis.

(4) For each of the valid measurement sets at each test site, calculate the mean concentration for the candidate method measurements, using equation 12 of this section. (The outlier test in paragraph (d)(1) of this section shall not be applied to the candidate method measurements.)

Equation 12

$$\bar{C}_j = \frac{1}{m}\sum_{i=1}^{n} C_{i,j}$$

Where:

$\bar{C}_j$ = The mean concentration measured by the candidate method for the measurement set;

$C_{i,j}$ = The measurement of the candidate method sampler or analyzer i on test day j; and

m = The number of valid candidate method measurements in the measurement set (normally 3).

(e) *Test for reference method precision.* (1) For each of the measurement sets for each site, calculate an estimate for the relative precision of the reference method measurements, RP_j, using equation 13 of this section:

Equation 13

$$RP_j = \frac{1}{\bar{R}_j}\sqrt{\frac{\sum_{i=1}^{n} R_{i,j}^2 - \frac{1}{n}\left(\sum_{i=1}^{n} R_{i,j}\right)^2}{n-1}} \times 100\%$$

(2) For each site, calculate an estimate of reference method relative precision for the site, RP, using the *root mean square* calculation of equation 14 of this section:

Equation 14

$$RP = \sqrt{\frac{1}{J}\sum_{j=1}^{J}\left(RP_j\right)^2}$$

Where, J is the total number of valid measurement sets for the site.

(3) Verify that the estimate for reference method relative precision for the site, RP, is not greater than the value specified for reference method precision in table C–4 of this subpart. A reference method relative precision greater than the value specified in table C–4 of this subpart indicates that quality control for the reference method is inadequate, and corrective measures must be implemented before proceeding with the test.

(f) *Test for candidate method precision.* (1) For each of the measurement sets, for each site, calculate an estimate for the relative precision of the candidate method measurements, CP_j, using equation 15 of this section:

Equation 15

$$CP_j = \frac{1}{\bar{C}_j}\sqrt{\frac{\sum_{i=1}^{m} C_{i,j}^2 - \frac{1}{m}\left(\sum_{i=1}^{m} C_{i,j}\right)^2}{m-1}} \times 100\%$$

(2) For each site, calculate an estimate of candidate method relative precision for the site, CP, using the *root mean square* calculation of equation 16 of this section:

Equation 16

$$CP = \sqrt{\frac{1}{J}\sum_{j=1}^{J}\left(CP_j\right)^2}$$

Where, J is the total number of valid measurement sets for the site.

(3) To pass the test for precision, the mean candidate method relative precision at each site must not be greater than the value for candidate method precision specified in table C–4 of this subpart.

(g) *Test for additive and multiplicative bias (comparative slope and intercept).* (1) For each test site, calculate the mean concentration measured by the reference method, $\bar{R}$, using equation 17 of this section:

Equation 17

$$\bar{R}_j = \frac{1}{J}\sum_{j=1}^{J}\bar{R}_j$$

(2) For each test site, calculate the mean concentration measured by the candidate method, $\bar{C}$, using equation 18 of this section:

Equation 18

$$\bar{C} = \frac{1}{J}\sum_{j=1}^{J}\bar{C}_j$$

(3) For each test site, calculate the linear regression slope and intercept of the mean candidate method measurements ($\bar{C}_j$) against the mean reference method measurements ($\bar{R}_j$), using equations 19 and 20 of this section, respectively:

Equation 19

$$\text{Slope} = \frac{\sum_{j=1}^{J}\left(\bar{R}_j - \bar{R}\right)\left(\bar{C}_j - \bar{C}\right)}{\sum_{j=1}^{J}\left(\bar{R}_j - \bar{R}\right)^2}$$

Equation 20

$$\text{Intercept} = \bar{C} - \text{slope} \times \bar{R}$$

(4) To pass this test, at each test site:

(i) The slope (calculated to at least 2 decimal places) must be in the interval specified for regression slope in table C–4 of this subpart; and

(ii) The intercept (calculated to at least 2 decimal places) must be in the interval specified for regression intercept in table C–4 of this subpart.

(iii) The slope and intercept limits are illustrated in figures C–2 and C–3 of this subpart.

(h) *Tests for comparison correlation.* (1) For each test site, calculate the (Pearson) correlation coefficient, r (not the coefficient of determination, r^2), using equation 21 of this section:

Equation 21

$$r = \frac{\sum_{j=1}^{J}\left(\bar{R}_j - \bar{R}\right)\left(\bar{C}_j - \bar{C}\right)}{\sqrt{\sum_{j=1}^{J}\left(\bar{R}_j - \bar{R}\right)^2 \sum_{j=1}^{J}\left(\bar{C}_j - \bar{C}\right)^2}}$$

(2) For each test site, calculate the concentration coefficient of variation, CCV, using equation 22 of this section:

Equation 22

$$CCV = \frac{1}{\bar{R}}\sqrt{\frac{\sum_{j=1}^{J}\left(\bar{R}_j - \bar{R}\right)^2}{J-1}}$$

(3) To pass the test, the correlation coefficient, r, for each test site must not be less than the values, for various values of CCV, specified for correlation in table C–4 of this subpart. These limits are illustrated in figure C–4 of this subpart.

Tables to Subpart C of Part 53

TABLE C–1 TO SUBPART C OF PART 53.—TEST CONCENTRATION RANGES, NUMBER OF MEASUREMENTS REQUIRED, AND MAXIMUM DISCREPANCY SPECIFICATION

Pollutant	Concentration range, parts per million	Simultaneous measurements required				Maximum discrepancy specification, parts per million
		1-hr		24-hr		
		First set	Second set	First set	Second set	
Ozone	Low 0.06 to 0.10	5	6			0.02
	Med 0.15 to 0.25	5	6			.03
	High 0.35 to 0.45	4	6			.04
Total		14				18
Carbon monoxide	Low 7 to 11	5	6			1.5
	Med 20 to 30	5	6			2.0
	High 35 to 45	4	6			3.0
Total		14				18
Sulfur dioxide	Low 0.02 to 0.05			3	3	0.02
	Med 0.10 to 0.15			2	3	.03
	High 0.30 to 0.50	7	8	2	2	.04
Total		7	8	7	8	
Nitrogen dioxide	Low 0.02 to 0.08			3	3	0.02
	Med 0.10 to 0.20			2	3	.03
	High 0.25 to 0.35			2	2	.03
Total				7	8	

TABLE C–2 TO SUBPART C OF PART 53.—SEQUENCE OF TEST MEASUREMENTS

Measurement	Concentration range	
	First set	Second set
1	Low	Medium.
2	High	High.
3	Medium	Low.
4	High	High.
5	Low	Medium.
6	Medium	Low.
7	Low	Medium.
8	Medium	Low.
9	High	High.

TABLE C–2 TO SUBPART C OF PART 53.—SEQUENCE OF TEST MEASUREMENTS—Continued

Measurement	Concentration range	
	First set	Second set
10	Medium	Low.
11	High	Medium.
12	Low	High.
13	Medium	Medium.
14	Low	High.
15		Low.
16		Medium.
17		Low.
18		High.

TABLE C–3 TO SUBPART C OF PART 53.—TEST SPECIFICATIONS FOR PB METHODS

Concentration range, μg/m³	0.5–4.0
Minimum number of 24-hr measurements	5
Maximum analytical precision, percent	15
Maximum analytical accuracy, percent	±5
Maximum difference, percent of reference method	±20

TABLE C–4 TO SUBPART C OF PART 53.—TEST SPECIFICATIONS FOR PM_{10}, $PM_{2.5}$ AND $PMR_{10-2.5}$ CANDIDATE EQUIVALENT METHODS

Specification	PM_{10}	$PM_{2.5}$			$PM_{10-2.5}$	
		Class I	Class II	Class III	Class II	Class III
Acceptable concentration range (R_j), μg/m³.	15–300	3–200	3–200	3–200	3–200	3–200
Minimum number of test sites	2	1	2	4	2	4
Minimum number of candidate method samplers or analyzers per site.	3	3	3[1]	3[1]	3[1]	3[1]

TABLE C–4 TO SUBPART C OF PART 53.—TEST SPECIFICATIONS FOR PM_{10}, $PM_{2.5}$ AND $PMR_{10-2.5}$ CANDIDATE EQUIVALENT METHODS—Continued

Specification	PM_{10}	$PM_{2.5}$			$PM_{10-2.5}$	
		Class I	Class II	Class III	Class II	Class III
Number of reference method samplers per site.	3	3	3[1]	3[1]	3[1]	3[1]
Minimum number of acceptable sample sets per site for PM_{10} methods:						
R_j < 60 μg/m³	3					
R_j > 60 μg/m³	3					
Total	10					
Minimum number of acceptable sample sets per site for $PM_{2.5}$ and $PM_{10-2.5}$ candidate equivalent methods:						
R_j < 30 μg/m³ for 24-hr or R_j < 20 μg/m³ for 48-hr samples.		3				
R_j > 30 μg/m³ for 24-hr or R_j > 20 μg/m³ for 48-hr samples.		3				
Each season		10	23	23	23	23
Total, each site		10	23	23 (46 for two-season sites).	23	23 (46 for two-season sites)
Precision of replicate reference method measurements, P_{Rj} or $RP_{Rj'}$, respectively; RP for Class II or III $PM_{2.5}$ or $PM_{10-2.5'}$, maximum.	5 μg/m³ or 7%	2 μg/m³ or 5%	10%[2]	10%[2]	10%[2]	10%[2]
Precision of $PM_{2.5}$ or $PM_{10-2.5}$ candidate method, CP, each site.			10%[2]	15%[2]	15%[2]	15%[2]
Slope of regression relationship	1±0.10	1±0.05	1±0.10	1±0.10	1±0.10	1±0.12
Intercept of regression relationship, μg/m³.	0±5	0±1	Between: 13.55–(15.05 × slope), but not less than −1.5; and 16.56–(15.05 × slope), but not more than + 1.5.	Between: 15.05–(17.32 × slope), but not less than −2.0; and 15.05–(13.20 × slope), but not more than + 2.0.	Between: 62.05–(70.5 × slope), but not less than −3.5; and 78.95–(70.5 × slope), but not more than + 3.5.	Between: 70.50–(82.93 × slope), but not less than −7.0; and 70.50–(61.16 × slope), but not more than + 7.0
Correlation of reference method and candidate method measurements.	≥0.97	≥0.97.				

[1] Some missing daily measurement values may be permitted; see test procedure.
[2] Calculated as the root mean square over all measurement sets

TABLE C–5 TO SUBPART C OF PART 53—SUMMARY OF COMPARABILITY FIELD TESTING CAMPAIGN SITE AND SEASONAL REQUIREMENTS FOR CLASS II AND III FEMS FOR $PM_{10-2.5}$ AND $PM_{2.5}$

Candidate method	Test site	A	B	C	D
$PM_{2.5}$	Test site location area.	Los Angeles basin or California Central Valley.	Western city such as Denver, Salt Lake City, or Albuquerque.	Midwestern city	Northeastern or mid-Atlantic city.
	Test site characteristics.	Relatively high $PM_{2.5}$, nitrates, and semi-volatile organic pollutants.	Cold weather, higher elevation, winds, and dust.	Substantial temperature variation, high nitrates, wintertime conditions.	High sulfate and high relative humidity.
	Class III Field test campaigns (Total: 5).	Winter and summer	Winter only	Winter only	Summer only.
	Class II Field test campaigns (Total: 2).	Site A or B, any season		Site C or D, any season.	

TABLE C–5 TO SUBPART C OF PART 53—SUMMARY OF COMPARABILITY FIELD TESTING CAMPAIGN SITE AND SEASONAL REQUIREMENTS FOR CLASS II AND III FEMS FOR $PM_{10-2.5}$ AND $PM_{2.5}$—Continued

Candidate method	Test site	A	B	C	D
$PM_{10-2.5}$	Test site location area.	Los Angeles basin or California Central Valley.	Western city such as Las Vegas or Phoenix.	Midwestern city	Large city east of the Mississippi River.
	Test site characteristics.	Relatively high $PM_{2.5}$, nitrates, and semi-volatile organic pollutants.	High $PM_{10-2.5}$ to $PM_{2.5}$ ratio, wind-blown dust.	Substantial temperature variation, high nitrates, wintertime conditions.	High sulfate and high relative humidity.
	Class III Field test campaigns (Total: 5).	Winter and summer ..	Winter only	Winter only	Summer only.
	Class II Field test campaigns (Total: 2).	Site A or B, any season		Site C or D, any season.	

Figures to Subpart C of Part 53

Figure C–1 to Subpart C of Part 53—Suggested Format for Reporting Test Results for Methods for SO_2, CO, O_3, NO_2

Candidate Method _____

Reference Method _____

Applicant _____

☐ First Set ☐ Second Set ☐ Type

☐ 1 Hour ☐ 24 Hour

Concentration range		Date	Time	Concentration, ppm		Difference	Table C–1 spec.	Pass or fail
				Candidate	Reference			
Low	1							
_____ ppm	2							
to _____ ppm	3							
	4							
	5							
	6							
Medium	1							
_____ ppm	2							
to _____ ppm	3							
	4							
	5							
	6							
High	1							
_____ ppm	2							
to _____ ppm	3							
	4							
	5							
	6							
	7							
	8							
							Total Failures:	

FIGURE C-2 TO SUBPART C OF PART 53—ILLUSTRATION OF THE SLOPE AND INTERCEPT LIMITS FOR CLASS II AND CLASS III $PM_{2.5}$ CANDIDATE EQUIVALENT METHODS.

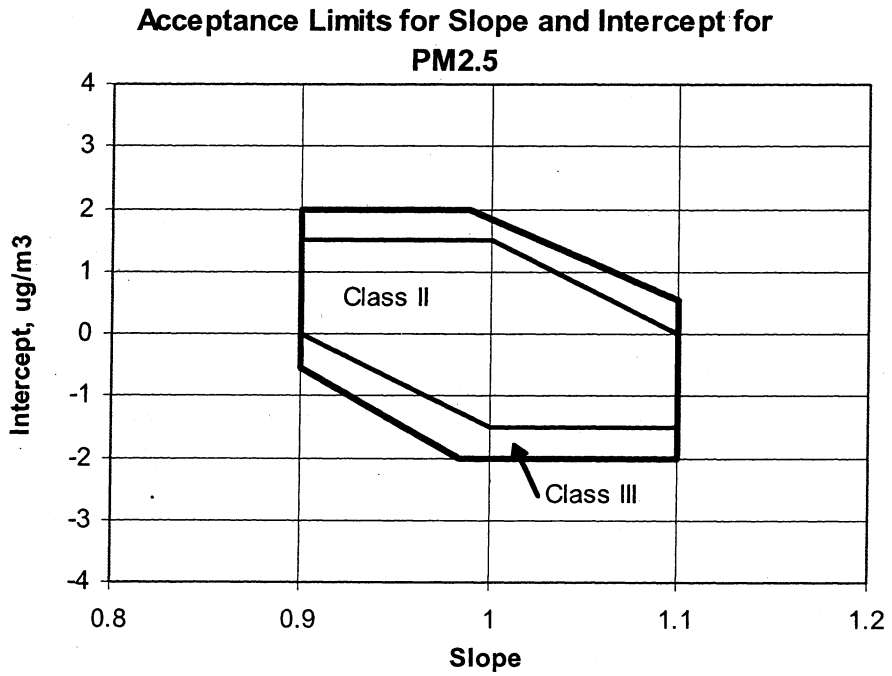


FIGURE C-3 TO SUBPART C OF PART 53—ILLUSTRATION OF THE SLOPE AND INTERCEPT LIMITS FOR CLASS II AND CLASS III $PM_{10-2.5}$ CANDIDATE EQUIVALENT METHODS.

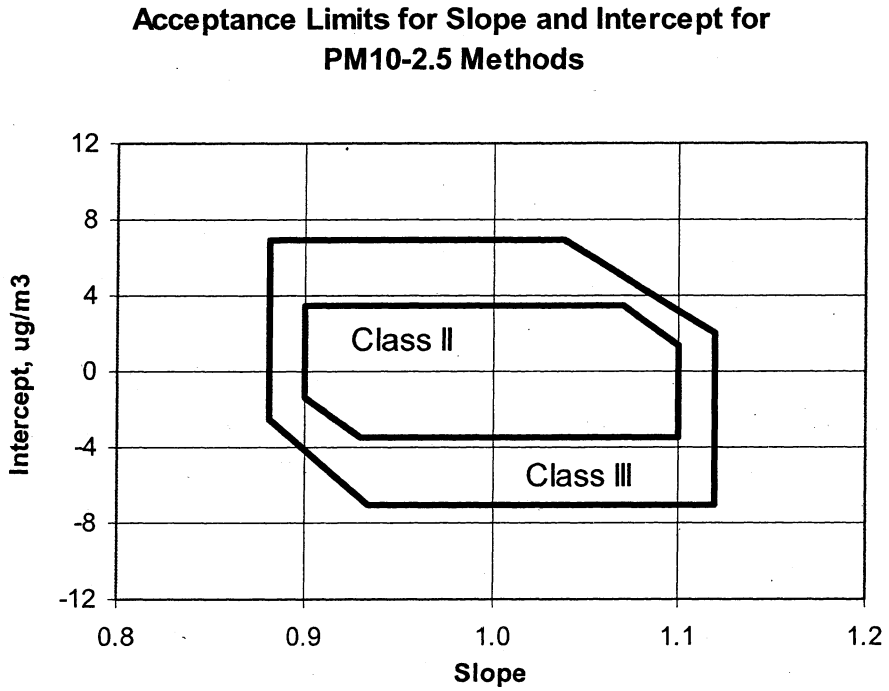
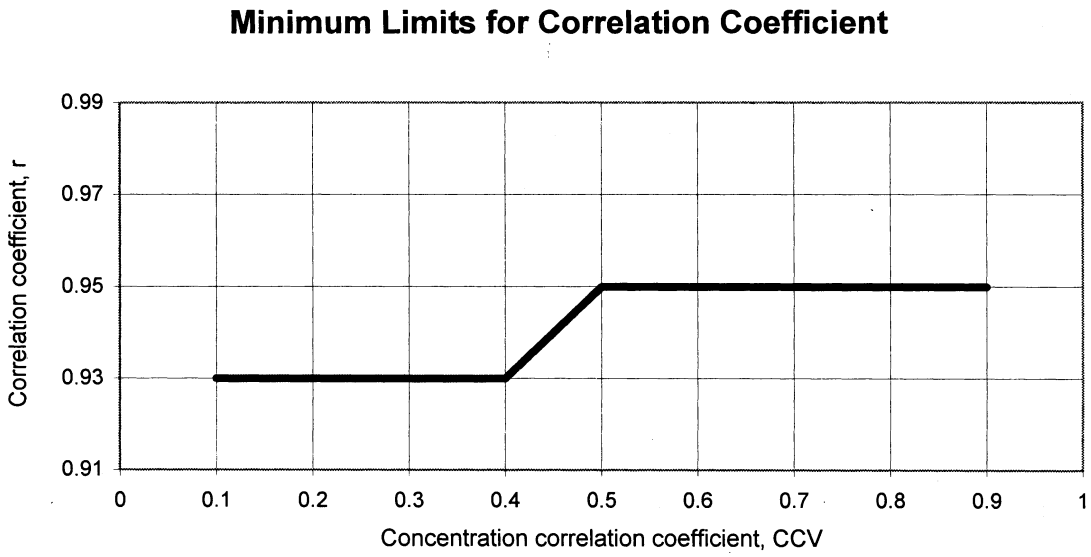


FIGURE C-4 TO SUBPART C OF PART 53–ILLUSTRATION OF THE MINIMUM LIMITS FOR CORRELATION COEFFICIENT FOR $PM_{2.5}$ AND $PM_{10-2.5}$ CLASS II AND III METHODS.



Appendix to Subpart C of Part 53

Appendix A to Subpart C of Part 53—References

(1) American National Standard Quality Systems for Environmental Data and Technology Programs—Requirements with guidance for use, ANSI/ASQC E4–2004. Available from American Society for Quality, P.O. Box 3005, Milwaukee, WI 53202 (*http://qualitypress.asq.org*).

(2) Quality Assurance Guidance Document 2.12. Monitoring $PM_{2.5}$ in Ambient Air Using Designated Reference or Class I Equivalent Methods. U.S. EPA, National Exposure Research Laboratory, Research Triangle Park, NC, November 1998 or later edition. Currently available at *http://www.epa.gov/ttn/amtic/pmqainf.html.*

Subpart E—Procedures for Testing Physical (Design) and Performance Characteristics of Reference Methods and Class I and Class II Equivalent Methods for $PM_{2.5}$ or $PM_{10-2.5}$

■ 7. The heading for subpart E is revised as set out above.

■ 8. Section 53.50 is revised to read as follows:

§ 53.50 General provisions.

(a) A candidate method for $PM_{2.5}$ or $PM_{10-2.5}$ described in an application for a FRM or FEM determination submitted under § 53.4 shall be determined by the EPA to be a FRM or a Class I, II, or III FEM on the basis of the definitions for such methods given in § 53.1. This subpart sets forth the specific tests that must be carried out and the test results, evidence, documentation, and other materials that must be provided to EPA to demonstrate that a $PM_{2.5}$ or $PM_{10-2.5}$ sampler associated with a candidate reference method or Class I or Class II equivalent method meets all design and performance specifications set forth in appendix L or O, respectively, of part 50 of this chapter as well as additional requirements specified in this subpart E. Some or all of these tests may also be applicable to a candidate Class III equivalent method or analyzer, as may be determined under § 53.3(b)(3).

(b) *$PM_{2.5}$ methods*—(1) *Reference method.* A sampler associated with a candidate reference method for $PM_{2.5}$ shall be subject to the provisions, specifications, and test procedures prescribed in §§ 53.51 through 53.58.

(2) *Class I method.* A sampler associated with a candidate Class I equivalent method for $PM_{2.5}$ shall be subject to the provisions, specifications, and test procedures prescribed in all sections of this subpart.

(3) *Class II method.* A sampler associated with a candidate Class II equivalent method for $PM_{2.5}$ shall be subject to the provisions, specifications, and test procedures prescribed in all applicable sections of this subpart, as specified in subpart F of this part or as specified in § 53.3(a)(3).

(c) *$PM_{10-2.5}$ methods*—(1) *Reference method.* A sampler associated with a reference method for $PM_{10-2.5}$, as specified in appendix O to part 50 of this chapter, shall be subject to the requirements in this paragraph (c)(1).

(i) The $PM_{2.5}$ sampler of the $PM_{10-2.5}$ sampler pair shall be verified to be either currently designated under this part 53 as a FRM for $PM_{2.5}$, or shown to meet all requirements for designation as a FRM for $PM_{2.5}$, in accordance with this part 53.

(ii) The PM_{10C} sampler of the $PM_{10-2.5}$ sampler pair shall be verified to be of like manufacturer, design, configuration, and fabrication to the $PM_{2.5}$ sampler of the $PM_{10-2.5}$ sampler pair, except for replacement of the particle size separator specified in section 7.3.4 of appendix L to part 50 of this chapter with the downtube extension as specified in Figure O–1 of appendix O to part 50 of this chapter.

(iii) For samplers that meet the provisions of paragraphs (c)(1)(i) and (ii) of this section, the candidate $PM_{10-2.5}$ reference method may be determined to be a FRM without further testing.

(2) *Class I method.* A sampler associated with a Class I candidate equivalent method for $PM_{10-2.5}$ shall meet the requirements in this paragraph (c)(2).

(i) The $PM_{2.5}$ sampler of the $PM_{10-2.5}$ sampler pair shall be verified to be either currently designated under this part 53 as a FRM or Class I FEM for $PM_{2.5}$, or shown to meet all requirements for designation as a FRM or Class I FEM for $PM_{2.5}$, in accordance with this part 53.

(ii) The PM_{10c} sampler of the $PM_{10-2.5}$ sampler pair shall be verified to be of similar design to the $PM_{10-2.5}$ sampler and to meet all requirements for designation as a FRM or Class I FRM for $PM_{2.5}$, in accordance with this part 53, except for replacement of the particle size separator specified in section 7.3.4

of appendix L to part 50 of this chapter with the downtube extension as specified in Figure O–1 of appendix O to part 50 of this chapter.

(iii) For samplers that meet the provisions of paragraphs (c)(2)(i) and (ii) of this section, the candidate $PM_{10-2.5}$ method may be determined to be a Class I FEM without further testing.

(3) *Class II method.* A sampler associated with a Class II candidate equivalent method for $PM_{10-2.5}$ shall be subject to the applicable requirements of this subpart E, as described in § 53.3(a)(5).

(d) The provisions of § 53.51 pertain to test results and documentation required to demonstrate compliance of a candidate method sampler with the design specifications set forth in 40 CFR part 50, appendix L or O, as applicable. The test procedures prescribed in §§ 53.52 through 53.59 pertain to performance tests required to demonstrate compliance of a candidate method sampler with the performance specifications set forth in 40 CFR part 50, appendix L or O, as applicable, as well as additional requirements specified in this subpart E. These latter test procedures shall be used to test the performance of candidate samplers against the performance specifications and requirements specified in each procedure and summarized in table E–1 of this subpart.

(e) Test procedures prescribed in § 53.59 do not apply to candidate reference method samplers. These procedures apply primarily to candidate Class I or Class II equivalent method samplers for $PM_{2.5}$ or $PM_{10-2.5}$ that have a sample air flow path configuration upstream of the sample filter that is modified from that specified for the FRM sampler, as set forth in 40 CFR part 50, appendix L, Figures L–1 to L–29 or 40 CFR part 50 appendix O, Figure O–1, if applicable, such as might be necessary to provide for sequential sample capability. The additional tests determine the adequacy of aerosol transport through any altered components or supplemental devices that are used in a candidate sampler upstream of the filter. In addition to the other test procedures in this subpart, these test procedures shall be used to further test the performance of such an equivalent method sampler against the performance specifications given in the procedure and summarized in table E–1 of this subpart.

(f) A 10-day operational field test of measurement precision is required under § 53.58 for both FRM and Class I FEM samplers for $PM_{2.5}$. This test requires collocated operation of three candidate method samplers at a field test site. For candidate FEM samplers, this test may be combined and carried out concurrently with the test for comparability to the FRM specified under § 53.34, which requires collocated operation of three FRM samplers and three candidate FEM samplers.

(g) All tests and collection of test data shall be performed in accordance with the requirements of reference 1, section 4.10.5 (ISO 9001) and reference 2, part B, (section 6) and Part C, (section 7) in appendix A of this subpart. All test data and other documentation obtained specifically from or pertinent to these tests shall be identified, dated, signed by the analyst performing the test, and submitted to EPA in accordance with subpart A of this part.

■ 9. Section 53.51 is revised to read as follows:

§ 53.51 Demonstration of compliance with design specifications and manufacturing and test requirements.

(a) *Overview.* (1) Paragraphs (a) through (f) of this section specify certain documentation that must be submitted and tests that are required to demonstrate that samplers associated with a designated FRM or FEM for $PM_{2.5}$ or $PM_{10-2.5}$ are properly manufactured to meet all applicable design and performance specifications and have been properly tested according to all applicable test requirements for such designation. Documentation is required to show that instruments and components of a $PM_{2.5}$ or $PM_{10-2.5}$ sampler are manufactured in an ISO 9001-registered facility under a quality system that meets ISO–9001 requirements for manufacturing quality control and testing.

(2) In addition, specific tests are required by paragraph (d) of this section to verify that critical features of FRM samplers—the particle size separator and the surface finish of surfaces specified to be anodized—meet the specifications of 40 CFR part 50, appendix L or appendix O, as applicable. A checklist is required to provide certification by an ISO-certified auditor that all performance and other required tests have been properly and appropriately conducted, based on a reasonable and appropriate sample of the actual operations or their documented records. Following designation of the method, another checklist is required initially to provide an ISO-certified auditor's certification that the sampler manufacturing process is being implemented under an adequate and appropriate quality system.

(3) For the purposes of this section, the definitions of ISO 9001-registered facility and ISO-certified auditor are found in § 53.1. An exception to the reliance by EPA on ISO-certified auditors is the requirement for the submission of the operation or instruction manual associated with the candidate method to EPA as part of the application. This manual is required under § 53.4(b)(3). The EPA has determined that acceptable technical judgment for review of this manual may not be assured by ISO-certified auditors, and approval of this manual will therefore be performed by EPA.

(b) *ISO registration of manufacturing facility.* The applicant must submit documentation verifying that the samplers identified and sold as part of a designated $PM_{2.5}$ or $PM_{10-2.5}$ FRM or FEM will be manufactured in an ISO 9001-registered facility and that the manufacturing facility is maintained in compliance with all applicable ISO 9001 requirements (reference 1 in appendix A of this subpart). The documentation shall indicate the date of the original ISO 9001 registration for the facility and shall include a copy of the most recent certification of continued ISO 9001 facility registration. If the manufacturer does not wish to initiate or complete ISO 9001 registration for the manufacturing facility, documentation must be included in the application to EPA describing an alternative method to demonstrate that the facility meets the same general requirements as required for registration to ISO–9001. In this case, the applicant must provide documentation in the application to demonstrate, by required ISO-certified auditor's inspections, that a quality system is in place which is adequate to document and monitor that the sampler system components and final assembled samplers all conform to the design, performance and other requirements specified in this part and in 40 CFR part 50, appendix L.

(c) *Sampler manufacturing quality control.* The manufacturer must ensure that all components used in the manufacture of $PM_{2.5}$ or $PM_{10-2.5}$ samplers to be sold as part of a FRM or FEM and that are specified by design in 40 CFR part 50, appendix L or O (as applicable), are fabricated or manufactured exactly as specified. If the manufacturer's quality records show that its quality control (QC) and quality assurance (QA) system of standard process control inspections (of a set number and frequency of testing that is less than 100 percent) complies with the applicable QA provisions of section 4 of reference 4 in appendix A of this subpart and prevents nonconformances, 100 percent testing shall not be required until that conclusion is disproved by

customer return or other independent manufacturer or customer test records. If problems are uncovered, inspection to verify conformance to the drawings, specifications, and tolerances shall be performed. Refer also to paragraph (e) of this section—final assembly and inspection requirements.

(d) *Specific tests and supporting documentation required to verify conformance to critical component specifications*— (1) *Verification of $PM_{2.5}$ (WINS) impactor jet diameter.* For samplers utilizing the WINS impactor particle size separator specified in paragraphs 7.3.4.1, 7.3.4.2, and 7.3.4.3 of appendix L to part 50 of this chapter, the diameter of the jet of each impactor manufactured for a $PM_{2.5}$ or $PM_{10-2.5}$ sampler under the impactor design specifications set forth in 40 CFR part 50, appendix L, shall be verified against the tolerance specified on the drawing, using standard, NIST-traceable ZZ go/no go plug gages. This test shall be a final check of the jet diameter following all fabrication operations, and a record shall be kept of this final check. The manufacturer shall submit evidence that this procedure is incorporated into the manufacturing procedure, that the test is or will be routinely implemented, and that an appropriate procedure is in place for the disposition of units that fail this tolerance test.

(2) *VSCC separator.* For samplers utilizing the BGI VSCC™ Very Sharp Cut Cyclone particle size separator specified in paragraph 7.3.4.4 of appendix L to part 50 of this chapter, the VSCC manufacturer shall identify the critical dimensions and manufacturing tolerances for the device, develop appropriate test procedures to verify that the critical dimensions and tolerances are maintained during the manufacturing process, and carry out those procedures on each VSCC manufactured to verify conformance of the manufactured products. The manufacturer shall also maintain records of these tests and their results and submit evidence that this procedure is incorporated into the manufacturing procedure, that the test is or will be routinely implemented, and that an appropriate procedure is in place for the disposition of units that fail this tolerance test.

(3) *Verification of surface finish.* The anodization process used to treat surfaces specified to be anodized shall be verified by testing treated specimen surfaces for weight and corrosion resistance to ensure that the coating obtained conforms to the coating specification. The specimen surfaces shall be finished in accordance with military standard specification 8625F, Type II, Class I (reference 4 in appendix A of this subpart) in the same way the sampler surfaces are finished, and tested, prior to sealing, as specified in section 4.5.2 of reference 4 in appendix A of this subpart.

(e) *Final assembly and inspection requirements.* Each sampler shall be tested after manufacture and before delivery to the final user. Each manufacturer shall document its post-manufacturing test procedures. As a minimum, each test shall consist of the following: Tests of the overall integrity of the sampler, including leak tests; calibration or verification of the calibration of the flow measurement device, barometric pressure sensor, and temperature sensors; and operation of the sampler with a filter in place over a period of at least 48 hours. The results of each test shall be suitably documented and shall be subject to review by an ISO-certified auditor.

(f) *Manufacturer's audit checklists.* Manufacturers shall require an ISO-certified auditor to sign and date a statement indicating that the auditor is aware of the appropriate manufacturing specifications contained in 40 CFR part 50, appendix L or O (as applicable), and the test or verification requirements in this subpart. Manufacturers shall also require an ISO-certified auditor to complete the checklists, shown in figures E–1 and E–2 of this subpart, which describe the manufacturer's ability to meet the requirements of the standard for both designation testing and product manufacture.

(1) *Designation testing checklist.* The completed statement and checklist as shown in figure E–1 of this subpart shall be submitted with the application for FRM or FEM determination.

(2) *Product manufacturing checklist.* Manufacturers shall require an ISO-certified auditor to complete a Product Manufacturing Checklist (figure E–2 of this subpart), which evaluates the manufacturer on its ability to meet the requirements of the standard in maintaining quality control in the production of FRM or FEM devices. The completed checklist shall be submitted with the application for FRM or FEM determination.

■ 10. Section 53.52 is amended by revising paragraph (e)(1) to read as follows:

§ 53.52 Leak check test.

* * * * *

(e) *Test setup.* (1) The test sampler shall be set up for testing as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in its normal configuration for collecting PM samples, except that the sample air inlet shall be removed and the flow rate measurement adaptor shall be installed on the sampler's downtube.

* * * * *

■ 11. Section 53.53 is amended by revising paragraph (e)(1) to read as follows:

§ 53.53 Test for flow rate accuracy, regulation, measurement accuracy, and cut-off.

* * * * *

(e) *Test setup.* (1) Setup of the sampler shall be as required in this paragraph (e) and otherwise as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in its normal configuration for collecting PM samples. A sample filter and (or) the device for creating an additional 55 mm Hg pressure drop shall be installed for the duration of these tests. The sampler's ambient temperature, ambient pressure, and flow rate measurement systems shall all be calibrated per the sampler's operation or instruction manual within 7 days prior to this test.

* * * * *

■ 12. Section 53.54 is amended by revising paragraph (d)(1) to read as follows:

§ 53.54 Test for proper sampler operation following power interruptions.

* * * * *

(d) *Test setup.* (1) Setup of the sampler shall be performed as required in this paragraph (d) and otherwise as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in its normal configuration for collecting PM samples. A sample filter and (or) the device for creating an additional 55 mm Hg pressure drop shall be installed for the duration of these tests. The sampler's ambient temperature, ambient pressure, and flow measurement systems shall all be calibrated per the sampler's operating manual within 7 days prior to this test.

* * * * *

■ 13. Section 53.33 is amended by:
■ a. Revising paragraphs (a)(1) introductory text and (a)(2).
■ b. Revising paragraph (e)(1).
■ c. Revising paragraph (g)(5)(i) to read as follows.

§ 53.55 Test for effect of variations in power line voltage and ambient temperature.

(a) *Overview.* (1) This test procedure is a combined procedure to test various performance parameters under

variations in power line voltage and ambient temperature. Tests shall be conducted in a temperature-controlled environment over four 6-hour time periods during which reference temperature and flow rate measurements shall be made at intervals not to exceed 5 minutes. Specific parameters to be evaluated at line voltages of 105 and 125 volts and temperatures of −20 °C and +40 °C are as follows:

* * * * *

(2) The performance parameters tested under this procedure, the corresponding minimum performance specifications, and the applicable test conditions are summarized in table E–1 of this subpart. Each performance parameter tested, as described or determined in the test procedure, must meet or exceed the associated performance specification given. The candidate sampler must meet all specifications for the associated $PM_{2.5}$ or $PM_{10-2.5}$ method (as applicable) to pass this test procedure.

* * * * *

(e) * * * (1) Setup of the sampler shall be performed as required in this paragraph (e) and otherwise as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in the temperature-controlled chamber in its normal configuration for collecting PM samples. A sample filter and (or) the device for creating an additional 55 mm Hg pressure drop shall be installed for the duration of these tests. The sampler's ambient temperature, ambient pressure, and flow measurement systems shall all be calibrated per the sampler's operating manual within 7 days prior to this test.

* * * * *

(g) * * *

(5) * * * (i) Calculate the absolute value of the difference between the mean ambient air temperature indicated by the test sampler and the mean ambient (chamber) air temperature measured with the ambient air temperature recorder as:

Equation 16

$$T_{diff} = \left| T_{ind,ave} - T_{ref,ave} \right|$$

Where:

$T_{ind,ave}$ = The mean ambient air temperature indicated by the test sampler, °C; and

$T_{ref,ave}$ = The mean ambient air temperature measured by the reference temperature instrument, °C.

* * * * *

■ 14. Section 53.56 is amended by revising paragraphs (a)(2) and (e)(1) to read as follows:

§ 53.56 Test for effect of variations in ambient pressure.

(a) * * *

(2) The performance parameters tested under this procedure, the corresponding minimum performance specifications, and the applicable test conditions are summarized in table E–1 of this subpart. Each performance parameter tested, as described or determined in the test procedure, must meet or exceed the associated performance specification given. The candidate sampler must meet all specifications for the associated $PM_{2.5}$ or $PM_{10-2.5}$ method (as applicable) to pass this test procedure.

* * * * *

(e) * * * (1) Setup of the sampler shall be performed as required in this paragraph (e) and otherwise as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in the pressure-controlled chamber in its normal configuration for collecting PM samples. A sample filter and (or) the device for creating an additional 55 mm Hg pressure drop shall be installed for the duration of these tests. The sampler's ambient temperature, ambient pressure, and flow measurement systems shall all be calibrated per the sampler's operating manual within 7 days prior to this test.

* * * * *

■ 15. Section 53.57 is amended by revising paragraphs (a), (b), and (e)(1) to read as follows:

§ 53.57 Test for filter temperature control during sampling and post-sampling periods.

(a) *Overview.* This test is intended to measure the candidate sampler's ability to prevent excessive overheating of the PM sample collection filter (or filters) under conditions of elevated solar insolation. The test evaluates radiative effects on filter temperature during a 4-hour period of active sampling as well as during a subsequent 4-hour non-sampling time period prior to filter retrieval. Tests shall be conducted in an environmental chamber which provides the proper radiant wavelengths and energies to adequately simulate the sun's radiant effects under clear conditions at sea level. For additional guidance on conducting solar radiative tests under controlled conditions, consult military standard specification 810–E (reference 6 in appendix A of this subpart). The performance parameters tested under this procedure, the corresponding minimum performance specifications, and the applicable test conditions are summarized in table E–1 of this subpart. Each performance parameter tested, as described or determined in the test procedure, must meet or exceed the associated performance specification to successfully pass this test.

(b) *Technical definition.* Filter temperature control during sampling is the ability of a sampler to maintain the temperature of the particulate matter sample filter within the specified deviation (5 °C) from ambient temperature during any active sampling period. Post-sampling temperature control is the ability of a sampler to maintain the temperature of the particulate matter sample filter within the specified deviation from ambient temperature during the period from the end of active sample collection by the sampler until the filter is retrieved from the sampler for laboratory analysis.

* * * * *

(e) * * * (1) Setup of the sampler shall be performed as required in this paragraph (e) and otherwise as described in the sampler's operation or instruction manual referred to in § 53.4(b)(3). The sampler shall be installed upright and set up in the solar radiation environmental chamber in its normal configuration for collecting PM samples (with the inlet installed). The sampler's ambient and filter temperature measurement systems shall be calibrated per the sampler's operating manual within 7 days prior to this test. A sample filter shall be installed for the duration of this test. For sequential samplers, a sample filter shall also be installed in each available sequential channel or station intended for collection of a sequential sample (or at least five additional filters for magazine-type sequential samplers) as directed by the sampler's operation or instruction manual.

* * * * *

■ 16. Section 53.58 is revised to read as follows:

§ 53.58 Operational field precision and blank test.

(a) *Overview.* This test is intended to determine the operational precision of the candidate sampler during a minimum of 10 days of field operation, using three collocated test samplers. Measurements of PM are made at a test site with all of the samplers and then compared to determine replicate precision. Candidate sequential samplers are also subject to a test for possible deposition of particulate matter on inactive filters during a period of storage in the sampler. This procedure is applicable to both reference and equivalent methods. In the case of

equivalent methods, this test may be combined and conducted concurrently with the comparability test for equivalent methods (described in subpart C of this part), using three reference method samplers collocated with three candidate equivalent method samplers and meeting the applicable site and other requirements of subpart C of this part.

(b) *Technical definition.* (1) Field precision is defined as the standard deviation or relative standard deviation of a set of PM measurements obtained concurrently with three or more collocated samplers in actual ambient air field operation.

(2) Storage deposition is defined as the mass of material inadvertently deposited on a sample filter that is stored in a sequential sampler either prior to or subsequent to the active sample collection period.

(c) *Test site.* Any outdoor test site having $PM_{2.5}$ (or $PM_{10-2.5}$, as applicable) concentrations that are reasonably uniform over the test area and that meet the minimum level requirement of paragraph (g)(2) of this section is acceptable for this test.

(d) *Required facilities and equipment.* (1) An appropriate test site and suitable electrical power to accommodate three test samplers are required.

(2) Teflon sample filters, as specified in section 6 of 40 CFR part 50, appendix L, conditioned and preweighed as required by section 8 of 40 CFR part 50, appendix L, as needed for the test samples.

(e) *Test setup.* (1) Three identical test samplers shall be installed at the test site in their normal configuration for collecting PM samples in accordance with the instructions in the associated manual referred to in § 53.4(b)(3) and also in accordance with applicable supplemental guidance provided in reference 3 in appendix A of this subpart. The test samplers' inlet openings shall be located at the same height above ground and between 2 (1 for samplers with flow rates less than 200 L/min.) and 4 meters apart horizontally. The samplers shall be arranged or oriented in a manner that will minimize the spatial and wind directional effects on sample collection of one sampler on any other sampler.

(2) Each test sampler shall be successfully leak checked, calibrated, and set up for normal operation in accordance with the instruction manual and with any applicable supplemental guidance provided in reference 3 in appendix A of this subpart.

(f) *Test procedure.* (1) Install a conditioned, preweighed filter in each test sampler and otherwise prepare each sampler for normal sample collection. Set identical sample collection start and stop times for each sampler. For sequential samplers, install a conditioned, preweighed specified filter in each available channel or station intended for automatic sequential sample filter collection (or at least five additional filters for magazine-type sequential samplers), as directed by the sampler's operation or instruction manual. Since the inactive sequential channels are used for the storage deposition part of the test, they may not be used to collect the active PM test samples.

(2) Collect either a nominal 24-hour or 48-hour atmospheric PM sample simultaneously with each of the three test samplers.

(3) Following sample collection, retrieve the collected sample from each sampler. For sequential samplers, retrieve the additional stored (blank, unsampled) filters after at least 5 days (120 hours) storage in the sampler if the active samples are 24-hour samples, or after at least 10 days (240 hours) if the active samples are 48-hour samples.

(4) Determine the measured PM mass concentration for each sample in accordance with the applicable procedures prescribed for the candidate method in appendix L or appendix O, as applicable, of part 50 of this chapter, and in accordance with the associated manual referred to in § 53.4(b)(3) and supplemental guidance in reference 2 in appendix A of this subpart. For sequential samplers, also similarly determine the storage deposition as the net weight gain of each blank, unsampled filter after the 5-day (or 10-day) period of storage in the sampler.

(5) Repeat this procedure to obtain a total of 10 sets of any combination of (nominal) 24-hour or 48-hour PM measurements over 10 test periods. For sequential samplers, repeat the 5-day (or 10-day) storage test of additional blank filters once for a total of two sets of blank filters.

(g) *Calculations.* (1) Record the PM concentration for each test sampler for each test period as $C_{i,j}$, where i is the sampler number (i = 1,2,3) and j is the test period (j = 1,2, * * * 10).

(2)(i) For each test period, calculate and record the average of the three measured PM concentrations as $C_{ave,j}$ where j is the test period using equation 26 of this section:

Equation 26

$$C_{ave,j} = \frac{1}{3} \times \sum_{i=1}^{3} C_{1,j}$$

(ii) If $C_{ave,j} < 3\ \mu g/m^3$ for any test period, data from that test period are unacceptable, and an additional sample collection set must be obtained to replace the unacceptable data.

(3)(i) Calculate and record the precision for each of the 10 test periods, as the standard deviation, using equation 27 of this section:

Equation 27

$$P_j = \sqrt{\frac{\sum_{i=1}^{3} C_{i,j}^2 - \frac{1}{3}\left(\sum_{i=1}^{3} C_{i,j}\right)^2}{2}}$$

(ii) For each of the 10 test periods, also calculate and record the precision as the relative standard deviation, in percent, using equation 28 of this section:

Equation 28

$$RP_j = 100\% \times \frac{P_j}{C_{ave,j}}$$

(h) *Test results.* (1) The candidate method passes the precision test if *either* P_j or RP_j is less than or equal to the corresponding specification in table E–1 of this subpart for all 10 test periods.

(2) The candidate sequential sampler passes the blank filter storage deposition test if the average net storage deposition weight gain of each set of blank filters (total of the net weight gain of each blank filter divided by the number of filters in the set) from each test sampler (six sets in all) is less than 50 μg.

■ 17. Section 53.59 is amended by revising paragraphs (a) and (b)(5) to read as follows:

§ 53.59 Aerosol transport test for Class I equivalent method samplers.

(a) *Overview.* This test is intended to verify adequate aerosol transport through any modified or air flow splitting components that may be used in a Class I candidate equivalent method sampler such as may be necessary to achieve sequential sampling capability. This test is applicable to all Class I candidate samplers in which the aerosol flow path (the flow path through which sample air passes upstream of sample collection filter) differs significantly from that specified for reference method samplers as specified in 40 CFR part 50, appendix L or appendix O, as applicable. The test requirements and performance specifications for this test are summarized in table E–1 of this subpart.

(b) * * *

(5) An added component is any physical part of the sampler which is different in some way from that specified for a reference method

sampler in 40 CFR part 50, appendix L or appendix O, as applicable, such as a device or means to allow or cause the aerosol to be routed to one of several channels.

* * * * *

■ 18. Table E–1 to subpart E is revised to read as follows:

TABLE E–1 TO SUBPART E OF PART 53.—SUMMARY OF TEST REQUIREMENTS FOR REFERENCE AND CLASS I EQUIVALENT METHODS FOR $PM_{2.5}$ AND $PM_{10-2.5}$

Subpart E procedure	Performance test	Performance specification	Test conditions	Part 50, appendix L reference
§ 53.52 Sample leak check test.	Sampler leak check facility	External leakage: 80 mL/min, max. Internal leakage: 80 mL/min, max.	Controlled leak flow rate of 80 mL/min.	Sec. 7.4.6.
§ 53.53 Base flow rate test	Sample flow rate ..... 1. Mean ..... 2. Regulation ..... 3. Meas accuracy ..... 4. CV accuracy ..... 5. Cut-off	1. 16.67 ? 5% L/min ..... 2. 2%, max ..... 3. 2%, max ..... 4. 0.3%, max ..... 5. Flow rate cut-off if flow rate deviates more than 10% from design flow rate for >60 ± ?30 seconds.	(a) 6-hour normal operational test plus flow rate cut-off test. (b) Normal conditions ..... (c) Additional 55 mm Hg pressure drop to simulate loaded filter. (d) Variable flow restriction used for cut-off test.	Sec. 7.4.1, Sec. 7.4.2 Sec. 7.4.3 Sec. 7.4.4 Sec. 7.4.5.
§ 53.54 Power interruption test.	Sample flow rate: ..... 1. Mean ..... 2. Regulation ..... 3. Meas. accuracy ..... 4. CV accuracy ..... 5. Occurrence time of power interruptions. 6. Elapsed sample time .... 7. Sample volume	1. 16.67 ?± 5% L/Min ..... 2. 2%, max ..... 3. 2%, max ..... 4. 0.3% max ..... 5. ?±2 min if >60 seconds 6. ?±20 seconds ..... 7. ±?2%, max	(a) 6-hour normal operational test. (b) Nominal conditions ..... (c) Additional 55 mm Hg pressure drop to simulate loaded filter. (d) 6 power interruptions of various durations.	Sec. 7.4.1, Sec. 7.4.2 Sec. 7.4.3 Sec. 7.4.5 Sec. 7.4.12 Sec. 7.4.13 Sec. 7.4.15.4 Sec. 7.4.15.5.
§ 53.55 Temperature and line voltage test.	Sample flow rate ..... 1. Mean ..... 2. Regulation ..... 3. Meas. accuracy ..... 4. CV accuracy ..... 5. Temperature meas. accuracy. 6. Proper operation	1. 16.6 ±? 5% L/min ..... 2. 2%, max ..... 3. 2%, max ..... 4. 0.3% max ..... 5. 2 °C	(a) 6-hour normal operational test. (b) Normal conditions ..... (c) Additional 55 mm Hg pressure drop to simulate loaded filter. (d) Ambient temperature at −20 and +40 °C. (e) Line voltage: 105 Vac to 125 Vac.	Sec. 7.4.1, Sec. 7.4.2 Sec. 7.4.3 Sec. 7.4.5 Sec. 7.4.8 Sec. 7.4.15.1.
§ 53.56 Barometric pressure effect test.	Sample flow rate ..... 1. Mean ..... 2. Regulation ..... 3. Meas. accuracy ..... 4. CV accuracy ..... 5. Pressure meas. accuracy. 6. Proper operation	1. 16.67 ?± ? 5% L/min .... 2. 2%, max ..... 3. 2%, max ..... 3. 2%, max ..... 4. 0.3%, max ..... 5. 10 mm Hg	(a) 6-hour normal operational test. (b) Normal conditions ..... (c) Additional 55 mm Hg pressure drop to simulate loaded filter. (d) Barometric pressure at 600 and 800 mm Hg.	Sec. 7.4.1, Sec. 7.4.2 Sec. 7.4.3 Sec. 7.4.5 Sec. 7.4.9.
§ 53.57 Filter temperature control test.	1. Filter temp meas. accuracy. 2. Ambient temp. meas. accuracy. 3. Filter temp. control accuracy, sampling and non-sampling.	1. 2 °C ..... 2. 2 °C ..... 3. Not more than 5 °C above ambient temp. for more than 30 min..	(a) 4-hour simulated solar radiation, sampling. (b) 4-hour simulated solar radiation, non-sampling. (c) Solar flux of 1000 ?50 W/m².	Sec. 7.4.8 Sec. 7.4.10 Sec. 7.4.11.
§ 53.58 Field precision test	1. Measurement precision 2. Storage deposition test for sequential samplers.	1. P_j < 2 μg/m³ or RP_j < 5%. 2. 50 μg max. average weight gain/blank filter.	(a) 3 collocated samplers at 1 site for at least 10 days;. (b) $PM_{2.5}$ conc. > 3 μg/m³ (c) 24- or 48-hour samples (d) 5- or 10-day storage period for inactive stored filters.	Sec. 5.1 Sec. 7.3.5 Sec. 8 Sec. 9 Sec. 10.

TABLE E–1 TO SUBPART E OF PART 53.—SUMMARY OF TEST REQUIREMENTS FOR REFERENCE AND CLASS I EQUIVALENT METHODS FOR $PM_{2.5}$ AND $PM_{10-2.5}$—Continued

Subpart E procedure	Performance test	Performance specification	Test conditions	Part 50, appendix L reference
The Following Requirement Is Applicable to Class I Candidate Equivalent Methods Only				
§ 53.59 Aerosol transport test.	Aerosol transport	97%, min. for all channels	Determine aerosol transport through any new or modified components with respect to the reference method sampler before the filter for each channel.	

■ 19. References (1), (2), (3), and (5) in appendix A to subpart E of part 53 are revised to read as follows:

Appendix A to Subpart E of Part 53—References

(1) American National Standard Quality Systems—Model for Quality Assurance in Design, Development, Production, Installation, and Servicing, ANSI/ISO/ASQC Q9001–1994. Available from American Society for Quality, P.O. Box 3005, Milwaukee, WI 53202 (*http://qualitypress.asq.org*).

(2) American National Standard Quality Systems for Environmental Data and Technology Programs—Requirements with guidance for use, ANSI/ASQC E4–2004. Available from American Society for Quality, P.O. Box 3005, Milwaukee, WI 53202 (*http://qualitypress.asq.org*).

(3) Quality Assurance Guidance Document 2.12. Monitoring $PM_{2.5}$ in Ambient Air Using Designated Reference or Class I Equivalent Methods. U.S. EPA, National Exposure Research Laboratory, Research Triangle Park, NC, November 1998 or later edition. Currently available at *http://www.epa.gov/ttn/amtic/pmqainf.html.*

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(5) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume IV: Meteorological Measurements. Revised March, 1995. EPA–600/R–94–038d. Available from National Technical Information Service, Springfield, VA 22161, (800–553–6847, *http://www.ntis.gov*). NTIS number PB95–199782INZ.

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Subpart F—[Amended]

■ 20. Section 53.60 is amended by:

■ a. Revising paragraph (b);

■ b. Revising paragraph (c);

■ c. Revising paragraph (d) introductory text; and

■ d. Revising paragraph (f)(4) to read as follows:

§ 53.60 General provisions.

* * * * *

(b) A candidate method described in an application for a FRM or FEM determination submitted under § 53.4 shall be determined by the EPA to be a Class II candidate equivalent method on the basis of the definition of a Class II FEM in § 53.1.

(c) Any sampler associated with a Class II candidate equivalent method (Class II sampler) must meet all applicable requirements for FRM samplers or Class I FEM samplers specified in subpart E of this part, as appropriate. Except as provided in § 53.3(a)(3), a Class II $PM_{2.5}$ sampler must meet the additional requirements as specified in paragraph (d) of this section.

(d) Except as provided in paragraphs (d)(1), (2), and (3) of this section, all Class II samplers are subject to the additional tests and performance requirements specified in § 53.62 (full wind tunnel test), § 53.65 (loading test), and § 53.66 (volatility test). Alternative tests and performance requirements, as described in paragraphs (d)(1), (2), and (3) of this section, are optionally available for certain Class II samplers which meet the requirements for reference method or Class I equivalent method samplers given in 40 CFR part 50, appendix L, and in subpart E of this part, except for specific deviations of the inlet, fractionator, or filter.

* * * * *

(f) * * *

(4) *Loading test.* The loading test is conducted to ensure that the performance of a candidate sampler is not significantly affected by the amount of particulate deposited on its interior surfaces between periodic cleanings. The candidate sampler is artificially loaded by sampling a test environment containing aerosolized, standard test dust. The duration of the loading phase is dependent on both the time between cleaning as specified by the candidate method and the aerosol mass concentration in the test environment. After loading, the candidate's performance must then be evaluated by § 53.62 (full wind tunnel evaluation), § 53.63 (wind tunnel inlet aspiration test), or § 53.64 (static fractionator test). If the results of the appropriate test meet the criteria presented in table F–1 of this subpart, then the candidate sampler passes the loading test under the condition that it be cleaned at least as often as the cleaning frequency proposed by the candidate method and that has been demonstrated to be acceptable by this test.

* * * * *

■ 21. The section heading of § 53.61 is revised to read as follows:

§ 53.61 Test conditions.

* * * * *

■ 22. Section 53.66 is amended by revising paragraph (e)(2)(iii) to read as follows:

§ 53.66 Test procedure: Volatility test.

* * * * *

(e) * * *

(2) * * *

(iii) Operate the candidate and the reference samplers such that they simultaneously sample the test aerosol for 2 hours for a candidate sampler operating at 16.7 L/min or higher, or proportionately longer for a candidate sampler operating at a lower flow rate.

* * * * *

■ 23. Table F–1 to subpart F is revised to read as follows:

TABLE F–1 TO SUBPART F OF PART 53.—PERFORMANCE SPECIFICATIONS FOR $PM_{2.5}$ CLASS II EQUIVALENT SAMPLERS

Performance test	Specifications	Acceptance criteria
§ 53.62 Full Tunnel Evaluation	Solid VOAG produced aerosol at 2 km/hr and 24 km/hr.	Dp_{50} 2.5 μm ± 0.2 μm Numerical Analysis Results: 95% ≤ ? R_c ≤ ? 105%
§ 53.63 Wind Tunnel Inlet Aspriation Test	Liquid VOAG produced aerosol at 2 km/hr and 24 km/hr.	Relative Aspiration: 95% ≤ ? A ≤ ? 105%
§ 53.64 Static Fractionator Test	Evaluation of the fractionator under static conditions.	Dp_{50} = 2.5 μm ? 0.2 μm Numerical Analysis Results: 95% ? ≤ R_c ? ≤ 105%
§ 53.65 Loading Test	Loading of the clean candidate under laboratory conditions.	Acceptance criteria as specified in the post-loading evaluation test (§ 53.62, § 53.63, or § 53.64)
§ 53.66 Volatility Test	Polydisperse liquid aerosol produced by air nebulization of A.C.S. reagent grade glycerol, 99.5% minimum purity.	Regression Parameters Slope = 1 ± 0.1, Intercept = 0 ± ? 0.15mg r ≥ 0.97.

■ 24. In Figure E–1 to subpart F, the figure number ''E–1'' is revised to read ''F–1.''

PART 58—[AMENDED]

■ 25. The authority citation for part 58 is revised to read as follows:

Authority: 42 U.S.C. 7403, 7410, 7601(a), 7611, and 7619.

■ 26. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.
58.1 Definitions.
58.2 Purpose.
58.3 Applicability.

Subpart A—General Provisions

§ 58.1 Definitions.

As used in this part, all terms not defined herein have the meaning given them in the Act.

Act means the Clean Air Act as amended (42 U.S.C. 7401, *et seq.*)

Additive and multiplicative bias means the linear regression intercept and slope of a linear plot fitted to corresponding candidate and reference method mean measurement data pairs.

Administrator means the Administrator of the Environmental Protection Agency (EPA) or his or her authorized representative.

Air Quality System (AQS) means EPA's computerized system for storing and reporting of information relating to ambient air quality data.

Approved regional method (ARM) means a continuous $PM_{2.5}$ method that has been approved specifically within a State or local air monitoring network for purposes of comparison to the NAAQS and to meet other monitoring objectives.

AQCR means air quality control region.

CO means carbon monoxide.

Combined statistical area (CSA) is defined by the U.S. Office of Management and Budget as a geographical area consisting of two or more adjacent Core Based Statistical Areas (CBSA) with employment interchange of at least 15 percent. Combination is automatic if the employment interchange is 25 percent and determined by local opinion if more than 15 but less than 25 percent (*http://www.census.gov/population/estimates/metro-city/List6.txt*).

Community monitoring zone (CMZ) means an optional averaging area with established, well defined boundaries, such as county or census block, within an MPA that has relatively uniform concentrations of annual $PM_{2.5}$ as defined by appendix N of part 50 of this chapter. Two or more community-oriented SLAMS monitors within a CMZ that meet certain requirements as set forth in appendix N of part 50 of this chapter may be averaged for making comparisons to the annual $PM_{2.5}$ NAAQS.

Core-based statistical area (CBSA) is defined by the U.S. Office of Management and Budget, as a statistical geographic entity consisting of the county or counties associated with at least one urbanized area/urban cluster of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration. Metropolitan Statistical Areas (MSAs) and micropolitan statistical areas are the two categories of CBSA (metropolitan areas have populations greater than 50,000; and micropolitan areas have populations between 10,000 and 50,000). In the case of very large cities where two or more CBSAs are combined, these larger areas are referred to as combined statistical areas (CSAs) (*http://www.census.gov/population/estimates/metro-city/List1.txt*).

Corrected concentration pertains to the result of an accuracy or precision assessment test of an open path analyzer in which a high-concentration test or audit standard gas contained in a short test cell is inserted into the optical measurement beam of the instrument. When the pollutant concentration measured by the analyzer in such a test includes both the pollutant concentration in the test cell and the concentration in the atmosphere, the atmospheric pollutant concentration must be subtracted from the test measurement to obtain the corrected concentration test result. The corrected concentration is equal to the measured concentration minus the average of the atmospheric pollutant concentrations measured (without the test cell) immediately before and immediately after the test.

Design value means the calculated concentration according to the applicable appendix of part 50 of this chapter for the highest site in an attainment or nonattainment area.

EDO means environmental data operations.

Effective concentration pertains to testing an open path analyzer with a high-concentration calibration or audit standard gas contained in a short test cell inserted into the optical measurement beam of the instrument. Effective concentration is the equivalent ambient-level concentration that would produce the same spectral absorbance over the actual atmospheric monitoring path length as produced by the high-concentration gas in the short test cell. Quantitatively, effective concentration is equal to the actual concentration of the gas standard in the test cell multiplied by the ratio of the path length of the test cell to the actual atmospheric monitoring path length.

Federal equivalent method (FEM) means a method for measuring the concentration of an air pollutant in the ambient air that has been designated as an equivalent method in accordance with part 53 of this chapter; it does not include a method for which an equivalent method designation has been canceled in accordance with § 53.11 or § 53.16 of this chapter.

Federal reference method (FRM) means a method of sampling and

analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to part 50 of this chapter, or a method that has been designated as a reference method in accordance with this part; it does not include a method for which a reference method designation has been canceled in accordance with § 53.11 or § 53.16 of this chapter.

HNO_3 means nitric acid.

Local agency means any local government agency, other than the State agency, which is charged by a State with the responsibility for carrying out a portion of the plan.

Meteorological measurements means measurements of wind speed, wind direction, barometric pressure, temperature, relative humidity, solar radiation, ultraviolet radiation, and/or precipitation.

Metropolitan Statistical Area (MSA) means a CBSA associated with at least one urbanized area of 50,000 population or greater. The central county plus adjacent counties with a high degree of integration comprise the area.

Monitor means an instrument, sampler, analyzer, or other device that measures or assists in the measurement of atmospheric air pollutants and which is acceptable for use in ambient air surveillance under the applicable provisions of appendix C to this part.

Monitoring agency means a State or local agency responsible for meeting the requirements of this part.

Monitoring organization means a State, local, or other monitoring organization responsible for operating a monitoring site for which the quality assurance regulations apply.

Monitoring path for an open path analyzer means the actual path in space between two geographical locations over which the pollutant concentration is measured and averaged.

Monitoring path length of an open path analyzer means the length of the monitoring path in the atmosphere over which the average pollutant concentration measurement (path-averaged concentration) is determined. See also, *optical measurement path length.*

Monitoring planning area (MPA) means a contiguous geographic area with established, well defined boundaries, such as a CBSA, county or State, having a common area that is used for planning monitoring locations for $PM_{2.5}$. An MPA may cross State boundaries, such as the Philadelphia PA–NJ MSA, and be further subdivided into community monitoring zones. MPAs are generally oriented toward CBSAs or CSAs with populations greater than 200,000, but for convenience, those portions of a State that are not associated with CBSAs can be considered as a single MPA.

NATTS means the national air toxics trends stations. This network provides hazardous air pollution ambient data.

NCore means the National Core multipollutant monitoring stations. Monitors at these sites are required to measure particles ($PM_{2.5}$, speciated $PM_{2.5}$, $PM_{10-2.5}$), O_3, SO_2, CO, nitrogen oxides ($NO/NO_2/NO_y$), Pb, and basic meteorology.

Network means all stations of a given type or types.

NH_3 means ammonia.

NO_2 means nitrogen dioxide. NO means nitrogen oxide. NO_X means oxides of nitrogen and is defined as the sum of the concentrations of NO_2 and NO.

NO_y means the sum of all total reactive nitrogen oxides, including NO, NO_2, and other nitrogen oxides referred to as NO_Z.

O_3 means ozone.

Open path analyzer means an automated analytical method that measures the average atmospheric pollutant concentration in situ along one or more monitoring paths having a monitoring path length of 5 meters or more and that has been designated as a reference or equivalent method under the provisions of part 53 of this chapter.

Optical measurement path length means the actual length of the optical beam over which measurement of the pollutant is determined. The path-integrated pollutant concentration measured by the analyzer is divided by the optical measurement path length to determine the path-averaged concentration. Generally, the optical measurement path length is:

(1) Equal to the monitoring path length for a (bistatic) system having a transmitter and a receiver at opposite ends of the monitoring path;

(2) Equal to twice the monitoring path length for a (monostatic) system having a transmitter and receiver at one end of the monitoring path and a mirror or retroreflector at the other end; or

(3) Equal to some multiple of the monitoring path length for more complex systems having multiple passes of the measurement beam through the monitoring path.

PAMS means photochemical assessment monitoring stations.

Pb means lead.

Plan means an implementation plan approved or promulgated pursuant to section 110 of the Act.

PM means PM_{10}, $PM1_{10C}$, $PM_{2.5}$, $PM_{10-2.5}$, or particulate matter of unspecified size range.

$PM_{2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers as measured by a reference method based on appendix L of part 50 of this chapter and designated in accordance with part 53 of this chapter, by an equivalent method designated in accordance with part 53 of this chapter, or by an approved regional method designated in accordance with appendix C to this part.

PM_{10} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix J of part 50 of this chapter and designated in accordance with part 53 of this chapter or by an equivalent method designated in accordance with part 53 of this chapter.

PM_{10C} means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by a reference method based on appendix O of part 50 of this chapter and designated in accordance with part 53 of this chapter or by an equivalent method designated in accordance with part 53 of this chapter.

$PM_{10-2.5}$ means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers and greater than a nominal 2.5 micrometers as measured by a reference method based on appendix O to part 50 of this chapter and designated in accordance with part 53 of this chapter or by an equivalent method designated in accordance with part 53 of this chapter.

Point analyzer means an automated analytical method that measures pollutant concentration in an ambient air sample extracted from the atmosphere at a specific inlet probe point and that has been designated as a reference or equivalent method in accordance with part 53 of this chapter.

Population-oriented monitoring (or sites) means residential areas, commercial areas, recreational areas, industrial areas where workers from more than one company are located, and other areas where a substantial number of people may spend a significant fraction of their day.

Primary quality assurance organization means a monitoring organization or other organization that is responsible for a set of stations that monitor the same pollutant and for which data quality assessments can be pooled. Each criteria pollutant sampler/monitor at a monitoring station in the SLAMS and SPM networks must be associated with one, and only one, primary quality assurance organization.

Probe means the actual inlet where an air sample is extracted from the atmosphere for delivery to a sampler or point analyzer for pollutant analysis.

PSD station means any station operated for the purpose of establishing the effect on air quality of the emissions from a proposed source for purposes of prevention of significant deterioration as required by § 51.24(n) of this chapter.

Regional Administrator means the Administrator of one of the ten EPA Regional Offices or his or her authorized representative.

Reporting organization means an entity, such as a State, local, or Tribal monitoring agency, that collects and reports air quality data to EPA.

Site means a geographic location. One or more stations may be at the same site.

SLAMS means State or local air monitoring stations. The SLAMS make up the ambient air quality monitoring sites that are primarily needed for NAAQS comparisons, but may serve other data purposes. SLAMS exclude special purpose monitor (SPM) stations and include NCore, PAMS, and all other State or locally operated stations that have not been designated as SPM stations.

SO_2 means sulfur dioxide.

Special purpose monitor (SPM) station means a monitor included in an agency's monitoring network that the agency has designated as a special purpose monitor station in its monitoring network plan and in the Air Quality System, and which the agency does not count when showing compliance with the minimum requirements of this subpart for the number and siting of monitors of various types.

State agency means the air pollution control agency primarily responsible for development and implementation of a plan under the Act.

State speciation site means a supplemental $PM_{2.5}$ speciation station that is not part of the speciation trends network.

Station means a single monitor, or a group of monitors with a shared objective, located at a particular site.

STN station means a $PM_{2.5}$ speciation station designated to be part of the speciation trends network. This network provides chemical species data of fine particulate.

Traceable means that a local standard has been compared and certified, either directly or via not more than one intermediate standard, to a National Institute of Standards and Technology (NIST)-certified primary standard such as a NIST-traceable Reference Material (NTRM) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS).

TSP (total suspended particulates) means particulate matter as measured by the method described in appendix B of part 50 of this chapter.

Urbanized area means an area with a minimum residential population of at least 50,000 people and which generally includes core census block groups or blocks that have a population density of at least 1,000 people per square mile and surrounding census blocks that have an overall density of at least 500 people per square mile. The Census Bureau notes that under certain conditions, less densely settled territory may be part of each Urbanized Area.

VOC means volatile organic compounds.

§ 58.2 Purpose.

(a) This part contains requirements for measuring ambient air quality and for reporting ambient air quality data and related information. The monitoring criteria pertain to the following areas:

(1) Quality assurance procedures for monitor operation and data handling.

(2) Methodology used in monitoring stations.

(3) Operating schedule.

(4) Siting parameters for instruments or instrument probes.

(5) Minimum ambient air quality monitoring network requirements used to provide support to the State implementation plans (SIP), national air quality assessments, and policy decisions. These minimums are described as part of the network design requirements, including minimum numbers and placement of monitors of each type.

(6) Air quality data reporting, and requirements for the daily reporting of an index of ambient air quality.

(b) The requirements pertaining to provisions for an air quality surveillance system in the SIP are contained in this part.

(c) This part also acts to establish a national ambient air quality monitoring network for the purpose of providing timely air quality data upon which to base national assessments and policy decisions.

§ 58.3 Applicability.

This part applies to:

(a) State air pollution control agencies.

(b) Any local air pollution control agency to which the State has delegated authority to operate a portion of the State's SLAMS network.

(c) Owners or operators of proposed sources.

■ 27. Subpart B is revised to read as follows:

Subpart B—Monitoring Network

Sec.

58.10 Annual monitoring network plan and periodic network assessment.
58.11 Network technical requirements.
58.12 Operating schedules.
58.13 Monitoring network completion.
58.14 System modification.
58.15 Annual air monitoring data certification.
58.16 Data submittal and archiving requirements.

Subpart B—Monitoring Network

§ 58.10 Annual monitoring network plan and periodic network assessment.

(a)(1) Beginning July 1, 2007, the State, or where applicable local, agency shall adopt and submit to the Regional Administrator an annual monitoring network plan which shall provide for the establishment and maintenance of an air quality surveillance system that consists of a network of SLAMS monitoring stations including FRM, FEM, and ARM monitors that are part of SLAMS, NCore stations, STN stations, State speciation stations, SPM stations, and/or, in serious, severe and extreme ozone nonattainment areas, PAMS stations, and SPM monitoring stations. The plan shall include a statement of purposes for each monitor and evidence that siting and operation of each monitor meets the requirements of appendices A, C, D, and E of this part, where applicable. The annual monitoring network plan must be made available for public inspection for at least 30 days prior to submission to EPA.

(2) Any annual monitoring network plan that proposes SLAMS network modifications including new monitoring sites is subject to the approval of the EPA Regional Administrator, who shall provide opportunity for public comment and shall approve or disapprove the plan and schedule within 120 days. If the State or local agency has already provided a public comment opportunity on its plan and has made no changes subsequent to that comment opportunity, the Regional Administrator is not required to provide a separate opportunity for comment.

(3) The plan for establishing required NCore multipollutant stations shall be submitted to the Administrator not later than July 1, 2009. The plan shall provide for all required stations to be operational by January 1, 2011.

(b) The annual monitoring network plan must contain the following information for each existing and proposed site:

(1) The AQS site identification number.

(2) The location, including street address and geographical coordinates.

(3) The sampling and analysis method(s) for each measured parameter.

(4) The operating schedules for each monitor.

(5) Any proposals to remove or move a monitoring station within a period of 18 months following plan submittal.

(6) The monitoring objective and spatial scale of representativeness for each monitor as defined in appendix D to this part.

(7) The identification of any sites that are suitable and sites that are not suitable for comparison against the annual $PM_{2.5}$ NAAQS as described in § 58.30.

(8) The MSA, CBSA, CSA or other area represented by the monitor.

(c) The annual monitoring network plan must document how States and local agencies provide for the review of changes to a $PM_{2.5}$ monitoring network that impact the location of a violating $PM_{2.5}$ monitor or the creation/change to a community monitoring zone, including a description of the proposed use of spatial averaging for purposes of making comparisons to the annual $PM_{2.5}$ NAAQS as set forth in appendix N to part 50 of this chapter. The affected State or local agency must document the process for obtaining public comment and include any comments received through the public notification process within their submitted plan.

(d) The State, or where applicable local, agency shall perform and submit to the EPA Regional Administrator an assessment of the air quality surveillance system every 5 years to determine, at a minimum, if the network meets the monitoring objectives defined in appendix D to this part, whether new sites are needed, whether existing sites are no longer needed and can be terminated, and whether new technologies are appropriate for incorporation into the ambient air monitoring network. The network assessment must consider the ability of existing and proposed sites to support air quality characterization for areas with relatively high populations of susceptible individuals (e.g., children with asthma), and, for any sites that are being proposed for discontinuance, the effect on data users other than the agency itself, such as nearby States and Tribes or health effects studies. For $PM_{2.5}$, the assessment also must identify needed changes to population-oriented sites. The State, or where applicable local, agency must submit a copy of this 5-year assessment, along with a revised annual network plan, to the Regional Administrator. The first assessment is due July 1, 2010.

(e) All proposed additions and discontinuations of SLAMS monitors in annual monitoring network plans and periodic network assessments are subject to approval according to § 58.14.

§ 58.11 Network technical requirements.

(a)(1) State and local governments shall follow the applicable quality assurance criteria contained in appendix A to this part when operating the SLAMS networks.

(2) Beginning January 1, 2009, State and local governments shall follow the quality assurance criteria contained in appendix A to this part that apply to SPM sites when operating any SPM site which uses a FRM, FEM, or ARM and meets the requirements of appendix E to this part, unless the Regional Administrator approves an alternative to the requirements of appendix A with respect to such SPM sites because meeting those requirements would be physically and/or financially impractical due to physical conditions at the monitoring site and the requirements are not essential to achieving the intended data objectives of the SPM site. Alternatives to the requirements of appendix A may be approved for an SPM site as part of the approval of the annual monitoring plan, or separately.

(3) The owner or operator of an existing or a proposed source shall follow the quality assurance criteria in appendix A to this part that apply to PSD monitoring when operating a PSD site.

(b) State and local governments must follow the criteria in appendix C to this part to determine acceptable monitoring methods or instruments for use in SLAMS networks. Appendix C criteria are optional at SPM stations.

(c) State and local governments must follow the network design criteria contained in appendix D to this part in designing and maintaining the SLAMS stations. The final network design and all changes in design are subject to approval of the Regional Administrator. NCore, STN, and PAMS network design and changes are also subject to approval of the Administrator. Changes in SPM stations do not require approvals, but a change in the designation of a monitoring site from SLAMS to SPM requires approval of the Regional Administrator.

(d) State and local governments must follow the criteria contained in appendix E to this part for siting monitor inlets, paths or probes at SLAMS stations. Appendix E adherence is optional for SPM stations.

§ 58.12 Operating schedules.

State and local governments shall collect ambient air quality data at any SLAMS station on the following operational schedules:

(a) For continuous analyzers, consecutive hourly averages must be collected except during:

(1) Periods of routine maintenance,

(2) Periods of instrument calibration, or

(3) Periods or monitoring seasons exempted by the Regional Administrator.

(b) For Pb manual methods, at least one 24-hour sample must be collected every 6 days except during periods or seasons exempted by the Regional Administrator.

(c) For PAMS VOC samplers, samples must be collected as specified in section 5 of appendix D to this part. Area-specific PAMS operating schedules must be included as part of the PAMS network description and must be approved by the Regional Administrator.

(d) For manual $PM_{2.5}$ samplers:

(1) Manual $PM_{2.5}$ samplers at SLAMS stations other than NCore stations must operate on at least a 1-in-3 day schedule at sites without a collocated continuously operating $PM_{2.5}$ monitor. For SLAMS $PM_{2.5}$ sites with both manual and continuous $PM_{2.5}$ monitors operating, the monitoring agency may request approval for a reduction to 1-in-6 day $PM_{2.5}$ sampling at SLAMS stations or for seasonal sampling from the EPA Regional Administrator. The EPA Regional Administrator may grant sampling frequency reductions after consideration of factors, including but not limited to the historical $PM_{2.5}$ data quality assessments, the location of current $PM_{2.5}$ design value sites, and their regulatory data needs. Sites that have design values that are within plus or minus 10 percent of the NAAQS; and sites where the 24-hour values exceed the NAAQS for a period of 3 years are required to maintain at least a 1-in-3 day sampling frequency. Sites that have a design value within plus or minus 5 percent of the daily $PM_{2.5}$ NAAQS must have an FRM or FEM operate on a daily schedule.

(2) Manual $PM_{2.5}$ samplers at NCore stations and required regional background and regional transport sites must operate on at least a 1-in-3 day sampling frequency.

(3) Manual $PM_{2.5}$ speciation samplers at STN stations must operate on a 1-in-3 day sampling frequency.

(e) For PM_{10} samplers'a 24-hour sample must be taken from midnight to midnight (local time) to ensure national consistency. The minimum monitoring schedule for the site in the area of expected maximum concentration shall be based on the relative level of that

monitoring site concentration with respect to the 24-hour standard as illustrated in Figure 1. If the operating agency demonstrates by monitoring data that during certain periods of the year conditions preclude violation of the PM_{10} 24-hour standard, the increased sampling frequency for those periods or seasons may be exempted by the Regional Administrator and permitted to revert back to once in six days. The minimum sampling schedule for all other sites in the area remains once every six days. No less frequently than as part of each 5-year network assessment, the most recent year of data must be considered to estimate the air quality status at the site near the area of maximum concentration. Statistical models such as analysis of concentration frequency distributions as described in ''Guideline for the Interpretation of Ozone Air Quality Standards,'' EPA–450/479–003, U.S. Environmental Protection Agency, Research Triangle Park, NC, January 1979, should be used. Adjustments to the monitoring schedule must be made on the basis of the 5-year network assessment. The site having the highest concentration in the most current year must be given first consideration when selecting the site for the more frequent sampling schedule. Other factors such as major change in sources of PM_{10} emissions or in sampling site characteristics could influence the location of the expected maximum concentration site. Also, the use of the most recent 3 years of data might, in some cases, be justified in order to provide a more representative database from which to estimate current air quality status and to provide stability to the network. This multiyear consideration reduces the possibility of an anomalous year biasing a site selected for accelerated sampling. If the maximum concentration site based on the most current year is not selected for the more frequent operating schedule, documentation of the justification for selection of an alternative site must be submitted to the Regional Office for approval during the 5-year network assessment process. Minimum data completeness criteria, number of years of data and sampling frequency for judging attainment of the NAAQS are discussed in appendix K of part 50 of this chapter.

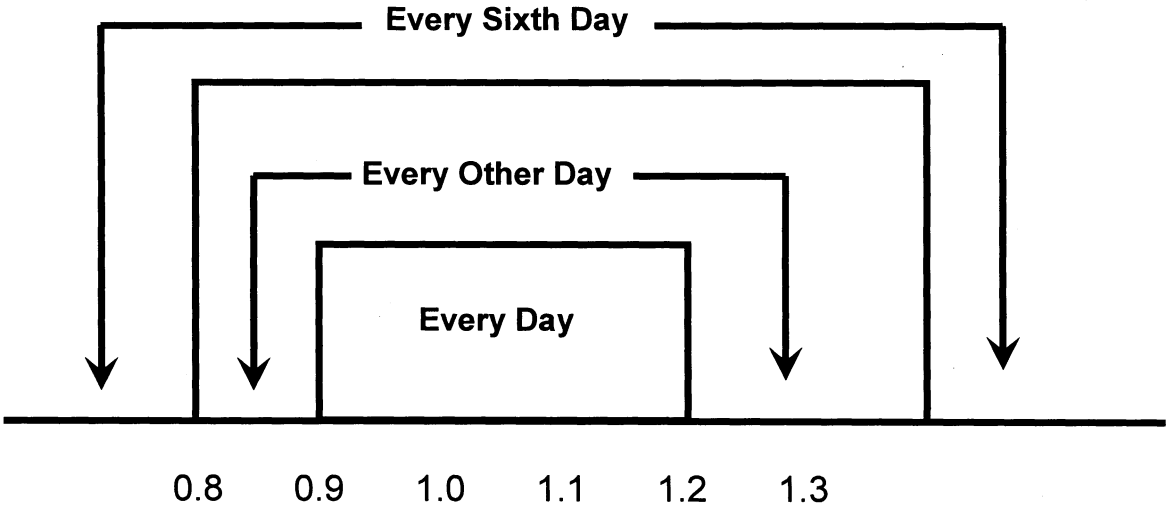

Figure 1 – Ratio to Standard

(f) For manual $PM_{10-2.5}$ samplers:

(1) Manual $PM_{10-2.5}$ samplers at NCore stations must operate on at least a 1-in-3 day schedule at sites without a collocated continuously operating federal equivalent $PM_{10-2.5}$ method that has been designated in accordance with part 53 of this chapter.

(2) Manual $PM_{10-2.5}$ speciation samplers at NCore stations must operate on at least a 1-in-3 day sampling frequency.

§ 58.13 Monitoring network completion.

(a) The network of NCore multipollutant sites must be physically established no later than January 1, 2011, and at that time, operating under all of the requirements of this part, including the requirements of appendices A, C, D, E, and G to this part.

(b) Where existing networks are not in conformance with required numbers of monitors specified in this part, additional required monitors must be operated by January 1, 2008.

§ 58.14 System modification.

(a) The State, or where appropriate local, agency shall develop and implement a plan and schedule to modify the ambient air quality monitoring network that complies with the findings of the network assessments required every 5 years by § 58.10(e). The State or local agency shall consult with the EPA Regional Administrator during the development of the schedule to modify the monitoring program, and shall make the plan and schedule available to the public for 30 days prior to submission to the EPA Regional Administrator. The final plan and schedule with respect to the SLAMS network are subject to the approval of the EPA Regional Administrator. Plans containing modifications to NCore Stations or PAMS Stations shall be submitted to the Administrator. The Regional Administrator shall provide opportunity for public comment and shall approve or disapprove submitted plans and schedules within 120 days.

(b) Nothing in this section shall preclude the State, or where appropriate local, agency from making modifications to the SLAMS network for reasons other than those resulting from the periodic network assessments. These modifications must be reviewed and

approved by the Regional Administrator. Each monitoring network may make or be required to make changes between the 5-year assessment periods, including for example, site relocations or the addition of PAMS networks in bumped-up ozone nonattainment areas. These modifications must address changes invoked by a new census and changes due to changing air quality levels. The State, or where appropriate local, agency shall provide written communication describing the network changes to the Regional Administrator for review and approval as these changes are identified.

(c) State, or where appropriate, local agency requests for SLAMS monitor station discontinuation, subject to the review of the Regional Administrator, will be approved if any of the following criteria are met and if the requirements of appendix D to this part, if any, continue to be met. Other requests for discontinuation may also be approved on a case-by-case basis if discontinuance does not compromise data collection needed for implementation of a NAAQS and if the requirements of appendix D to this part, if any, continue to be met.

(1) Any $PM_{2.5}$, O_3, CO, PM_{10}, SO_2, Pb, or NO_2 SLAMS monitor which has shown attainment during the previous five years, that has a probability of less than 10 percent of exceeding 80 percent of the applicable NAAQS during the next three years based on the levels, trends, and variability observed in the past, and which is not specifically required by an attainment plan or maintenance plan. In a nonattainment or maintenance area, if the most recent attainment or maintenance plan adopted by the State and approved by EPA contains a contingency measure to be triggered by an air quality concentration and the monitor to be discontinued is the only SLAMS monitor operating in the nonattainment or maintenance area, the monitor may not be discontinued.

(2) Any SLAMS monitor for CO, PM_{10}, SO_2, or NO_2 which has consistently measured lower concentrations than another monitor for the same pollutant in the same county (or portion of a county within a distinct attainment area, nonattainment area, or maintenance area, as applicable) during the previous five years, and which is not specifically required by an attainment plan or maintenance plan, if control measures scheduled to be implemented or discontinued during the next five years would apply to the areas around both monitors and have similar effects on measured concentrations, such that the retained monitor would remain the higher reading of the two monitors being compared.

(3) For any pollutant, any SLAMS monitor in a county (or portion of a county within a distinct attainment, nonattainment, or maintenance area, as applicable) provided the monitor has not measured violations of the applicable NAAQS in the previous five years, and the approved SIP provides for a specific, reproducible approach to representing the air quality of the affected county in the absence of actual monitoring data.

(4) A $PM_{2.5}$ SLAMS monitor which EPA has determined cannot be compared to the relevant NAAQS because of the siting of the monitor, in accordance with § 58.30.

(5) A SLAMS monitor that is designed to measure concentrations upwind of an urban area for purposes of characterizing transport into the area and that has not recorded violations of the relevant NAAQS in the previous five years, if discontinuation of the monitor is tied to start-up of another station also characterizing transport.

(6) A SLAMS monitor not eligible for removal under any of the criteria in paragraphs (c)(1) through (c)(5) of this section may be moved to a nearby location with the same scale of representation if logistical problems beyond the State's control make it impossible to continue operation at its current site.

§ 58.15 Annual air monitoring data certification.

(a) The State, or where appropriate local, agency shall submit to the EPA Regional Administrator an annual air monitoring data certification letter to certify data collected at all SLAMS and at all FRM, FEM, and ARM SPM stations that meet criteria in appendix A to this part from January 1 to December 31 of the previous year. The senior air pollution control officer in each agency, or his or her designee, shall certify that the previous year of ambient concentration and quality assurance data are completely submitted to AQS and that the ambient concentration data are accurate to the best of her or his knowledge, taking into consideration the quality assurance findings.

(1) Through 2009, the annual data certification letter is due by July 1 of each year.

(2) Beginning in 2010, the annual data certification letter is due by May 1 of each year.

(b) Along with each certification letter, the State shall submit to the Administrator (through the appropriate Regional Office) an annual summary report of all the ambient air quality data collected at all SLAMS and at SPM stations using FRM, FEM, or ARMs. The annual report(s) shall be submitted for data collected from January 1 to December 31 of the previous year. The annual summary report(s) must contain all information and data required by the State's approved plan and must be submitted on the same schedule as the certification letter, unless an approved alternative date is included in the plan. The annual summary serves as the record of the specific data that is the object of the certification letter.

(c) Along with each certification letter, the State shall submit to the Administrator (through the appropriate Regional Office) a summary of the precision and accuracy data for all ambient air quality data collected at all SLAMS and at SPM stations using FRM, FEM, or ARMs. The summary of precision and accuracy shall be submitted for data collected from January 1 to December 31 of the previous year. The summary of precision and accuracy must be submitted on the same schedule as the certification letter, unless an approved alternative date is included in the plan.

§ 58.16 Data submittal and archiving requirements.

(a) The State, or where appropriate, local agency, shall report to the Administrator, via AQS all ambient air quality data and associated quality assurance data for SO_2; CO; O_3; NO_2; NO; NO_Y; NO_X; Pb; PM_{10} mass concentration; $PM_{2.5}$ mass concentration; for filter-based $PM_{2.5}$ FRM/FEM the field blank mass, sampler-generated average daily temperature, and sampler-generated average daily pressure; chemically speciated $PM_{2.5}$ mass concentration data; $PM_{10-2.5}$ mass concentration; chemically speciated $PM_{10-2.5}$ mass concentration data; meteorological data from NCore and PAMS sites; and metadata records and information specified by the AQS Data Coding Manual (*http://www.epa.gov/ttn/airs/airsaqs/manuals/manuals.htm*). Such air quality data and information must be submitted directly to the AQS via electronic transmission on the specified quarterly schedule described in paragraph (b) of this section.

(b) The specific quarterly reporting periods are January 1–March 31, April 1–June 30, July 1–September 30, and October 1–December 31. The data and information reported for each reporting period must contain all data and information gathered during the reporting period, and be received in the AQS within 90 days after the end of the quarterly reporting period. For example,

the data for the reporting period January 1–March 31 are due on or before June 30 of that year.

(c) Air quality data submitted for each reporting period must be edited, validated, and entered into the AQS (within the time limits specified in paragraph (b) of this section) pursuant to appropriate AQS procedures. The procedures for editing and validating data are described in the AQS Data Coding Manual and in each monitoring agency's quality assurance project plan.

(d) The State shall report VOC and if collected, carbonyl, NH_3, and HNO_3 data, from PAMS sites to AQS within 6 months following the end of each quarterly reporting period listed in paragraph (b) of this section.

(e) The State shall also submit any portion or all of the SLAMS and SPM data to the appropriate Regional Administrator upon request.

(f) The State, or where applicable, local agency shall archive all $PM_{2.5}$, PM_{10}, and $PM_{10-2.5}$ filters from manual low-volume samplers (samplers having flow rates less than 200 liters/minute) from all SLAMS sites for a minimum period of 1 year after collection. These filters shall be made available during the course of that year for supplemental analyses at the request of EPA or to provide information to State and local agencies on particulate matter composition. Other Federal agencies may request access to filters for purposes of supporting air quality management or community health—such as biological assay—through the applicable EPA Regional Administrator. The filters shall be archived according to procedures approved by the Administrator. The EPA recommends that particulate matter filters be archived for longer periods, especially for key sites in making NAAQS related decisions or for supporting health-related air pollution studies.

■ 28. Subpart C is revised to read as follows:

Subpart C—Special Purpose Monitors

§ 58.20 Special purpose monitors (SPM).

(a) An SPM is defined as any monitor included in an agency's monitoring network that the agency has designated as a special purpose monitor in its annual monitoring network plan and in AQS, and which the agency does not count when showing compliance with the minimum requirements of this subpart for the number and siting of monitors of various types. Any SPM operated by an air monitoring agency must be included in the periodic assessments and annual monitoring network plan required by § 58.10. The plan shall include a statement of purposes for each SPM monitor and evidence that operation of each monitor meets the requirements of appendix A or an approved alternative as provided by § 58.11(a)(2) where applicable. The monitoring agency may designate a monitor as an SPM after January 1, 2007 only if it is a new monitor, i.e., a SLAMS monitor that is not included in the currently applicable monitoring plan or, for a monitor included in the monitoring plan prior to January 1, 2007, if the Regional Administrator has approved the discontinuation of the monitor as a SLAMS site.

(b) Any SPM data collected by an air monitoring agency using a Federal reference method (FRM), Federal equivalent method (FEM), or approved regional method (ARM) must meet the requirements of § 58.11, § 58.12, and appendix A to this part or an approved alternative to appendix A to this part. Compliance with appendix E to this part is optional but encouraged except when the monitoring agency's data objectives are inconsistent with those requirements. Data collected at an SPM using a FRM, FEM, or ARM meeting the requirements of appendix A must be submitted to AQS according to the requirements of § 58.16. Data collected by other SPMs may be submitted. The monitoring agency must also submit to AQS an indication of whether each SPM reporting data to AQS monitor meets the requirements of appendices A and E to this part.

(c) All data from an SPM using an FRM, FEM, or ARM which has operated for more than 24 months is eligible for comparison to the relevant NAAQS, subject to the conditions of § 58.30, unless the air monitoring agency demonstrates that the data came from a particular period during which the requirements of appendix A or an approved alternative, appendix C, or appendix E were not met in practice.

(d) If an SPM using an FRM, FEM, or ARM is discontinued within 24 months of start-up, the Administrator will not base a NAAQS violation determination for the $PM_{2.5}$ or ozone NAAQS solely on data from the SPM.

(e) If an SPM using an FRM, FEM, or ARM is discontinued within 24 months of start-up, the Administrator will not designate an area as nonattainment for the CO, SO_2, NO_2, Pb, or 24-hour PM_{10} NAAQS solely on the basis of data from the SPM. Such data are eligible for use in determinations of whether a nonattainment area has attained one of these NAAQS.

(f) Prior approval from EPA is not required for discontinuance of an SPM.

■ 29. Subpart D is revised to read as follows:

Subpart D—Comparability of Ambient Data to NAAQS

§ 58.30 Special considerations for data comparisons to the NAAQS.

(a) *Comparability of $PM_{2.5}$ data.* (1) There are two forms of the $PM_{2.5}$ NAAQS described in part 50 of this chapter. The $PM_{2.5}$ monitoring site characteristics (see appendix D to this part, section 4.7.1) impact how the resulting $PM_{2.5}$ data can be compared to the annual $PM_{2.5}$ NAAQS form. $PM_{2.5}$ data that are representative, not of areawide but rather, of relatively unique population-oriented microscale, or localized hot spot, or unique population-oriented middle-scale impact sites are only eligible for comparison to the 24-hour $PM_{2.5}$ NAAQS. For example, if the $PM_{2.5}$ monitoring site is adjacent to a unique dominating local $PM_{2.5}$ source or can be shown to have average 24-hour concentrations representative of a smaller than neighborhood spatial scale, then data from a monitor at the site would only be eligible for comparison to the 24-hour $PM_{2.5}$ NAAQS.

(2) There are cases where certain population-oriented microscale or middle scale $PM_{2.5}$ monitoring sites are determined by the Regional Administrator to collectively identify a larger region of localized high ambient $PM_{2.5}$ concentrations. In those cases, data from these population-oriented sites would be eligible for comparison to the annual $PM_{2.5}$ NAAQS.

(b) [Reserved]

Subpart E—[Removed and Reserved]

■ 30. Subpart E of part 58 is removed and reserved.

Subpart F—[Amended]

■ 31. Section 58.50 is revised to read as follows:

§ 58.50 Index reporting.

(a) The State or where applicable, local agency shall report to the general public on a daily basis through prominent notice an air quality index that complies with the requirements of appendix G to this part.

(b) Reporting is required for all individual MSA with a population exceeding 350,000.

(c) The population of a MSA for purposes of index reporting is the most recent decennial U.S. census population.

Subpart G—[Amended]

■ 32. Sections 58.60 and 58.61 are revised to read as follows:

§ 58.60 Federal monitoring.

The Administrator may locate and operate an ambient air monitoring site if the State or local agency fails to locate, or schedule to be located, during the initial network design process, or as a result of the 5-year network assessments required in § 58.10, a SLAMS station at a site which is necessary in the judgment of the Regional Administrator to meet the objectives defined in appendix D to this part.

§ 58.61 Monitoring other pollutants.

The Administrator may promulgate criteria similar to that referenced in subpart B of this part for monitoring a pollutant for which an NAAQS does not exist. Such an action would be taken whenever the Administrator determines that a nationwide monitoring program is necessary to monitor such a pollutant.

■ 33. Appendix A to part 58 is revised to read as follows:

Appendix A to Part 58—Quality Assurance Requirements for SLAMS, SPMs and PSD Air Monitoring

1. General Information
2. Quality System Requirements
3. Measurement Quality Check Requirements
4. Calculations for Data Quality Assessments
5. Reporting Requirements
6. References

1. General Information

This appendix specifies the minimum quality system requirements applicable to SLAMS air monitoring data and PSD data for the pollutants SO_2, NO_2, O_3, CO, $PM_{2.5}$, PM_{10} and $PM_{10-2.5}$ submitted to EPA. This appendix also applies to all SPM stations using FRM, FEM, or ARM methods which also meet the requirements of Appendix E of this part. Monitoring organizations are encouraged to develop and maintain quality systems more extensive than the required minimums. The permit-granting authority for PSD may require more frequent or more stringent requirements. Monitoring organizations may, based on their quality objectives, develop and maintain quality systems beyond the required minimum. Additional guidance for the requirements reflected in this appendix can be found in the ''Quality Assurance Handbook for Air Pollution Measurement Systems'', volume II, part 1 (see reference 10 of this appendix) and at a national level in references 1, 2, and 3 of this appendix.

1.1 Similarities and Differences Between SLAMS and PSD Monitoring. In most cases, the quality assurance requirements for SLAMS, SPMs if applicable, and PSD are the same. Affected SPMs are subject to all the SLAMS requirements, even where not specifically stated in each section. Table A–1 of this appendix summarizes the major similarities and differences of the requirements for SLAMS and PSD. Both programs require:

(a) The development, documentation, and implementation of an approved quality system;

(b) The assessment of data quality;

(c) The use of reference, equivalent, or approved methods. The requirements of this appendix do not apply to a SPM that does not use a FRM, FEM, or ARM;

(d) The use of calibration standards traceable to NIST or other primary standard;

(e) Performance evaluations and systems.

1.1.1 The monitoring and quality assurance responsibilities for SLAMS are with the State or local agency, hereafter called the monitoring organization, whereas for PSD they are with the owner/operator seeking the permit. The monitoring duration for SLAMS is indefinite, whereas for PSD the duration is usually 12 months. Whereas the reporting period for precision and accuracy data is on an annual or calendar quarter basis for SLAMS, it is on a continuing sampler quarter basis for PSD, since the monitoring may not commence at the beginning of a calendar quarter.

1.1.2 The annual performance evaluations (described in section 3.2.2 of this appendix) for PSD must be conducted by personnel different from those who perform routine span checks and calibrations, whereas for SLAMS, it is the preferred but not the required condition. For PSD, the evaluation rate is 100 percent of the sites per reporting quarter whereas for SLAMS it is 25 percent of the sites or instruments quarterly. Monitoring for sulfur dioxide (SO_2) and nitrogen dioxide (NO_2) for PSD must be done with automated analyzers—the manual bubbler methods are not permitted.

1.1.3 The requirements for precision assessment for the automated methods are the same for both SLAMS and PSD. However, for manual methods, only one collocated site is required for PSD.

1.1.4 The precision, accuracy and bias data for PSD are reported separately for each sampler (site), whereas for SLAMS, the report may be by sampler (site), by primary quality assurance organization, or nationally, depending on the pollutant. SLAMS data are required to be reported to the AQS, PSD data are required to be reported to the permit-granting authority. Requirements in this appendix, with the exception of the differences discussed in this section, and in Table A–1 of this appendix will be expected to be followed by both SLAMS and PSD networks unless directly specified in a particular section.

1.2 Measurement Uncertainty. Measurement uncertainty is a term used to describe deviations from a true concentration or estimate that are related to the measurement process and not to spatial or temporal population attributes of the air being measured. Monitoring organizations must develop quality assurance project plans (QAPP) which describe how the organization intends to control measurement uncertainty to an appropriate level in order to achieve the objectives for which the data are collected. The process by which one determines the quality of data needed to meet the monitoring objective is sometimes referred to the Data Quality Objectives Process. Data quality indicators associated with measurement uncertainty include:

(a) Precision. A measurement of mutual agreement among individual measurements of the same property usually under prescribed similar conditions, expressed generally in terms of the standard deviation.

(b) Bias. The systematic or persistent distortion of a measurement process which causes errors in one direction.

(c) Accuracy. The degree of agreement between an observed value and an accepted reference value. Accuracy includes a combination of random error (imprecision) and systematic error (bias) components which are due to sampling and analytical operations.

(d) Completeness. A measure of the amount of valid data obtained from a measurement system compared to the amount that was expected to be obtained under correct, normal conditions.

(e) Detectability. The low critical range value of a characteristic that a method specific procedure can reliably discern.

1.3 Measurement Quality Checks. The SLAMS measurement quality checks described in sections 3.2 and 3.3 of this appendix shall be reported to AQS and are included in the data required for certification. The PSD network is required to implement the measurement quality checks and submit this information quarterly along with assessment information to the permit-granting authority.

1.4 Assessments and Reports. Periodic assessments and documentation of data quality are required to be reported to EPA or to the permit granting authority (PSD). To provide national uniformity in this assessment and reporting of data quality for all networks, specific assessment and reporting procedures are prescribed in detail in sections 3, 4, and 5 of this appendix. On the other hand, the selection and extent of the quality assurance and quality control activities used by a monitoring organization depend on a number of local factors such as field and laboratory conditions, the objectives for monitoring, the level of data quality needed, the expertise of assigned personnel, the cost of control procedures, pollutant concentration levels, etc. Therefore, quality system requirements in section 2 of this appendix are specified in general terms to allow each monitoring organization to develop a quality system that is most efficient and effective for its own circumstances while achieving the data quality objectives required for the SLAMS sites.

2. Quality System Requirements

A quality system is the means by which an organization manages the quality of the monitoring information it produces in a systematic, organized manner. It provides a framework for planning, implementing, assessing and reporting work performed by an organization and for carrying out required quality assurance and quality control activities.

2.1 Quality Management Plans and Quality Assurance Project Plans. All

monitoring organizations must develop a quality system that is described and approved in quality management plans (QMP) and quality assurance project plans (QAPP) to ensure that the monitoring results:

(a) Meet a well-defined need, use, or purpose;

(b) Provide data of adequate quality for the intended monitoring objectives;

(c) Satisfy stakeholder expectations;

(d) Comply with applicable standards specifications;

(e) Comply with statutory (and other) requirements of society; and

(f) Reflect consideration of cost and economics.

2.1.1 The QMP describes the quality system in terms of the organizational structure, functional responsibilities of management and staff, lines of authority, and required interfaces for those planning, implementing, assessing and reporting activities involving environmental data operations (EDO). The QMP must be suitably documented in accordance with EPA requirements (reference 2 of this appendix), and approved by the appropriate Regional Administrator, or his or her representative. The quality system will be reviewed during the systems audits described in section 2.5 of this appendix. Organizations that implement long-term monitoring programs with EPA funds should have a separate QMP document. Smaller organizations or organizations that do infrequent work with EPA funds may combine the QMP with the QAPP based on negotiations with the funding agency. Additional guidance on this process can be found in reference 10 of this appendix. Approval of the recipient's QMP by the appropriate Regional Administrator or his or her representative, may allow delegation of the authority to review and approve the QAPP to the recipient, based on adequacy of quality assurance procedures described and documented in the QMP. The QAPP will be reviewed by EPA during systems audits or circumstances related to data quality.

2.1.2 The QAPP is a formal document describing, in sufficient detail, the quality system that must be implemented to ensure that the results of work performed will satisfy the stated objectives. The quality assurance policy of the EPA requires every environmental data operation (EDO) to have a written and approved QAPP prior to the start of the EDO. It is the responsibility of the monitoring organization to adhere to this policy. The QAPP must be suitably documented in accordance with EPA requirements (reference 3 of this appendix).

2.1.3 The monitoring organization's quality system must have adequate resources both in personnel and funding to plan, implement, assess and report on the achievement of the requirements of this appendix and its approved QAPP.

2.2 Independence of Quality Assurance. The monitoring organization must provide for a quality assurance management function-that aspect of the overall management system of the organization that determines and implements the quality policy defined in a monitoring organization's QMP. Quality management includes strategic planning, allocation of resources and other systematic planning activities (e.g., planning, implementation, assessing and reporting) pertaining to the quality system. The quality assurance management function must have sufficient technical expertise and management authority to conduct independent oversight and assure the implementation of the organization's quality system relative to the ambient air quality monitoring program and should be organizationally independent of environmental data generation activities.

2.3. Data Quality Performance Requirements.

2.3.1 Data Quality Objectives. Data quality objectives (DQO) or the results of other systematic planning processes are statements that define the appropriate type of data to collect and specify the tolerable levels of potential decision errors that will be used as a basis for establishing the quality and quantity of data needed to support the objectives of the SLAMS stations. DQO will be developed by EPA to support the primary SLAMS objectives for each criteria pollutant. As they are developed they will be added to the regulation. DQO or the results of other systematic planning processes for PSD or other monitoring will be the responsibility of the monitoring organizations. The quality of the conclusions made from data interpretation can be affected by population uncertainty (spatial or temporal uncertainty) and measurement uncertainty (uncertainty associated with collecting, analyzing, reducing and reporting concentration data). This appendix focuses on assessing and controlling measurement uncertainty.

2.3.1.1 Measurement Uncertainty for Automated and Manual $PM_{2.5}$ Methods. The goal for acceptable measurement uncertainty is defined as 10 percent coefficient of variation (CV) for total precision and plus or minus 10 percent for total bias.

2.3.1.2 Measurement Uncertainty for Automated Ozone Methods. The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the coefficient variation (CV) of 7 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 7 percent.

2.3.1.3 Measurement Uncertainty for $PM_{10-2.5}$ Methods. The goal for acceptable measurement uncertainty is defined for precision as an upper 90 percent confidence limit for the coefficient variation (CV) of 15 percent and for bias as an upper 95 percent confidence limit for the absolute bias of 15 percent.

2.4 National Performance Evaluation Programs. Monitoring plans or the QAPP shall provide for the implementation of a program of independent and adequate audits of all monitors providing data for SLAMS and PSD including the provision of adequate resources for such audit programs. A monitoring plan (or QAPP) which provides for monitoring organization participation in EPA's National Performance Audit Program (NPAP) and the PM Performance Evaluation Program (PEP) program and which indicates the consent of the monitoring organization for EPA to apply an appropriate portion of the grant funds, which EPA would otherwise award to the monitoring organization for monitoring activities, will be deemed by EPA to meet this requirement. For clarification and to participate, monitoring organizations should contact either the appropriate EPA Regional Quality Assurance (QA) Coordinator at the appropriate EPA Regional Office location, or the NPAP Coordinator, Emissions Monitoring and Analysis Division (D205–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

2.5 Technical Systems Audit Program. Technical systems audits of each ambient air monitoring organization shall be conducted at least every 3 years by the appropriate EPA Regional Office and reported to the AQS. Systems audit programs are described in reference 10 of this appendix. For further instructions, monitoring organizations should contact the appropriate EPA Regional QA Coordinator.

2.6 Gaseous and Flow Rate Audit Standards.

2.6.1 Gaseous pollutant concentration standards (permeation devices or cylinders of compressed gas) used to obtain test concentrations for carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen oxide (NO), and nitrogen dioxide (NO_2) must be traceable to either a National Institute of Standards and Technology (NIST) Traceable Reference Material (NTRM) or a NIST-certified Gas Manufacturer's Internal Standard (GMIS), certified in accordance with one of the procedures given in reference 4 of this appendix. Vendors advertising certification with the procedures provided in reference 4 of this appendix and distributing gasses as ''EPA Protocol Gas'' must participate in the EPA Protocol Gas Verification Program or not use ''EPA'' in any form of advertising.

2.6.2 Test concentrations for ozone (O_3) must be obtained in accordance with the ultra violet photometric calibration procedure specified in appendix D to part 50 of this chapter, or by means of a certified O_3 transfer standard. Consult references 7 and 8 of this appendix for guidance on primary and transfer standards for O_3.

2.6.3 Flow rate measurements must be made by a flow measuring instrument that is traceable to an authoritative volume or other applicable standard. Guidance for certifying some types of flowmeters is provided in reference 10 of this appendix.

2.7 Primary Requirements and Guidance. Requirements and guidance documents for developing the quality system are contained in references 1 through 10 of this appendix, which also contain many suggested procedures, checks, and control specifications. Reference 10 of this appendix describes specific guidance for the development of a quality system for SLAMS. Many specific quality control checks and specifications for methods are included in the respective reference methods described in part 50 of this chapter or in the respective equivalent method descriptions available from EPA (reference 6 of this appendix). Similarly, quality control procedures related to specifically designated reference and equivalent method analyzers are contained in the respective operation or instruction manuals associated with those analyzers.

3. Measurement Quality Check Requirements

This section provides the requirements for primary quality assurance organizations (PQAOs) to perform the measurement quality checks that can be used to assess data quality. With the exception of the flow rate verifications (sections 3.2.3 and 3.3.2 of this appendix), data from these checks are required to be submitted to the AQS within the same time frame as routine ambient concentration data. Section 3.2 of this appendix describes checks of automated or continuous instruments while section 3.3 describe checks associated with manual sampling instruments. Other quality control samples are identified in the various references described earlier and can be used to control certain aspects of the measurement system.

3.1 Primary Quality Assurance Organization. A primary quality assurance organization is defined as a monitoring organization or a coordinated aggregation of such organizations that is responsible for a set of stations that monitors the same pollutant and for which data quality assessments can logically be pooled. Each criteria pollutant sampler/monitor at a monitoring station in the SLAMS network must be associated with one, and only one, primary quality assurance organization.

3.1.1 Each primary quality assurance organization shall be defined such that measurement uncertainty among all stations in the organization can be expected to be reasonably homogeneous, as a result of common factors. Common factors that should be considered by monitoring organizations in defining primary quality assurance organizations include:

(a) Operation by a common team of field operators according to a common set of procedures;

(b) Use of a common QAPP or standard operating procedures;

(c) Common calibration facilities and standards;

(d) Oversight by a common quality assurance organization; and

(e) Support by a common management, laboratory or headquarters.

3.1.2 Primary quality assurance organizations are not necessarily related to the organization reporting data to the AQS. Monitoring organizations having difficulty in defining the primary quality assurance organizations or in assigning specific sites to primary quality assurance organizations should consult with the appropriate EPA Regional Office. All definitions of primary quality assurance organizations shall be subject to final approval by the appropriate EPA Regional Office during scheduled network reviews or systems audits.

3.1.3 Data quality assessment results shall be reported as specified in section 5 of this appendix.

3.2 Measurement Quality Checks of Automated Methods. Table A–2 of this appendix provides a summary of the types and frequency of the measurement quality checks that will be described in this section.

3.2.1 One-Point Quality Control Check for SO_2, NO_2, O_3, and CO. A one-point quality control (QC) check must be performed at least once every 2 weeks on each automated analyzer used to measure SO_2, NO_2, O_3 and CO. The frequency of QC checks may be reduced based upon review, assessment and approval of the EPA Regional Administrator. However, with the advent of automated calibration systems more frequent checking is encouraged. See Reference 10 of this appendix for guidance on the review procedure. The QC check is made by challenging the analyzer with a QC check gas of known concentration (effective concentration for open path analyzers) between 0.01 and 0.10 parts per million (ppm) for SO_2, NO_2, and O_3, and between 1 and 10 ppm for CO analyzers. The ranges allow for appropriate check gas selection for SLAMS sites that may be sampling for different objectives, i.e., trace gas monitoring vs. comparison to National Ambient Air Quality Standards (NAAQS). The QC check gas concentration selected should be related to the routine concentrations normally measured at sites within the monitoring network in order to appropriately reflect the precision and bias at these routine concentration ranges. To check the precision and bias of SLAMS analyzers operating at ranges either above or below the levels identified, use check gases of appropriate concentrations as approved by the appropriate EPA Regional Administrator or their designee. The standards from which check concentrations are obtained must meet the specifications of section 2.6 of this appendix.

3.2.1.1 Except for certain CO analyzers described below, point analyzers must operate in their normal sampling mode during the QC check, and the test atmosphere must pass through all filters, scrubbers, conditioners and other components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. If permitted by the associated operation or instruction manual, a CO point analyzer may be temporarily modified during the QC check to reduce vent or purge flows, or the test atmosphere may enter the analyzer at a point other than the normal sample inlet, provided that the analyzer's response is not likely to be altered by these deviations from the normal operational mode. If a QC check is made in conjunction with a zero or span adjustment, it must be made prior to such zero or span adjustments.

3.2.1.2 Open path analyzers are tested by inserting a test cell containing a QC check gas concentration into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and as appropriate, reflecting devices should be used during the test and the normal monitoring configuration of the instrument should be altered as little as possible to accommodate the test cell for the test. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentration of the QC check gas in the test cell must be selected to produce an effective concentration in the range specified earlier in this section. Generally, the QC test concentration measurement will be the sum of the atmospheric pollutant concentration and the QC test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open path instrument under test immediately before and immediately after the QC test from the QC check gas concentration measurement. If the difference between these before and after measurements is greater than 20 percent of the effective concentration of the test gas, discard the test result and repeat the test. If possible, open path analyzers should be tested during periods when the atmospheric pollutant concentrations are relatively low and steady.

3.2.1.3 Report the audit concentration (effective concentration for open path analyzers) of the QC gas and the corresponding measured concentration (corrected concentration, if applicable, for open path analyzers) indicated by the analyzer. The percent differences between these concentrations are used to assess the precision and bias of the monitoring data as described in sections 4.1.2 (precision) and 4.1.3 (bias) of this appendix.

3.2.2 Annual performance evaluation for SO_2, NO_2, O_3, or CO. Each calendar quarter (during which analyzers are operated), evaluate at least 25 percent of the SLAMS analyzers that monitor for SO_2, NO_2, O_3, or CO such that each analyzer is evaluated at least once per year. If there are fewer than four analyzers for a pollutant within a primary quality assurance organization, it is suggested to randomly evaluate one or more analyzers so that at least one analyzer for that pollutant is evaluated each calendar quarter. The evaluation should be conducted by a trained experienced technician other than the routine site operator.

3.2.2.1 (a) The evaluation is made by challenging the analyzer with audit gas standard of known concentration (effective concentration for open path analyzers) from at least three consecutive audit levels. The audit levels selected should represent or bracket 80 percent of ambient concentrations measured by the analyzer being evaluated:

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
1	0.02–0.05	0.0003–0.005	0.0002–0.002	0.08–0.10
2	0.06–0.10	0.006–0.01	0.003–0.005	0.50–1.00

Audit level	Concentration range, ppm			
	O_3	SO_2	NO_2	CO
3	0.11–0.20	0.02–0.10	0.006–0.10	1.50–4.00
4	0.21–0.30	0.11–0.40	0.11–0.30	5–15
5	0.31–0.90	0.41–0.90	0.31–0.60	20–50

(b) An additional 4th level is encouraged for those monitors that have the potential for exceeding the concentration ranges described by the initial three selected.

3.2.2.2 (a) NO_2 audit gas for chemiluminescence-type NO_2 analyzers must also contain at least 0.08 ppm NO. NO concentrations substantially higher than 0.08 ppm, as may occur when using some gas phase titration (GPT) techniques, may lead to evaluation errors in chemiluminescence analyzers due to inevitable minor NO–NO_X channel imbalance. Such errors may be atypical of routine monitoring errors to the extent that such NO concentrations exceed typical ambient NO concentrations at the site. These errors may be minimized by modifying the GPT technique to lower the NO concentrations remaining in the NO_2 audit gas to levels closer to typical ambient NO concentrations at the site.

(b) To evaluate SLAMS analyzers operating on ranges higher than 0 to 1.0 ppm for SO_2, NO_2, and O_3 or 0 to 50 ppm for CO, use audit gases of appropriately higher concentration as approved by the appropriate EPA Regional Administrator or the Administrator's designee.

3.2.2.3 The standards from which audit gas test concentrations are obtained must meet the specifications of section 2.6 of this appendix. The gas standards and equipment used for evaluations must not be the same as the standards and equipment used for calibration or calibration span adjustments. For SLAMS sites, the auditor should not be the operator or analyst who conducts the routine monitoring, calibration, and analysis. For PSD sites the auditor must not be the operator or analyst who conducts the routine monitoring, calibration, and analysis.

3.2.2.4 For point analyzers, the evaluation shall be carried out by allowing the analyzer to analyze the audit gas test atmosphere in its normal sampling mode such that the test atmosphere passes through all filters, scrubbers, conditioners, and other sample inlet components used during normal ambient sampling and as much of the ambient air inlet system as is practicable. The exception provided in section 3.2.1 of this appendix for certain CO analyzers does not apply for evaluations.

3.2.2.5 Open path analyzers are evaluated by inserting a test cell containing the various audit gas concentrations into the optical measurement beam of the instrument. If possible, the normally used transmitter, receiver, and, as appropriate, reflecting devices should be used during the evaluation, and the normal monitoring configuration of the instrument should be modified as little as possible to accommodate the test cell for the evaluation. However, if permitted by the associated operation or instruction manual, an alternate local light source or an alternate optical path that does not include the normal atmospheric monitoring path may be used. The actual concentrations of the audit gas in the test cell must be selected to produce effective concentrations in the evaluation level ranges specified in this section of this appendix. Generally, each evaluation concentration measurement result will be the sum of the atmospheric pollutant concentration and the evaluation test concentration. If so, the result must be corrected to remove the atmospheric concentration contribution. The corrected concentration is obtained by subtracting the average of the atmospheric concentrations measured by the open path instrument under test immediately before and immediately after the evaluation test (or preferably before and after each evaluation concentration level) from the evaluation concentration measurement. If the difference between the before and after measurements is greater than 20 percent of the effective concentration of the test gas standard, discard the test result for that concentration level and repeat the test for that level. If possible, open path analyzers should be evaluated during periods when the atmospheric pollutant concentrations are relatively low and steady. Also, if the open path instrument is not installed in a permanent manner, the monitoring path length must be reverified to within plus or minus 3 percent to validate the evaluation, since the monitoring path length is critical to the determination of the effective concentration.

3.2.2.6 Report both the evaluation concentrations (effective concentrations for open path analyzers) of the audit gases and the corresponding measured concentration (corrected concentrations, if applicable, for open path analyzers) indicated or produced by the analyzer being tested. The percent differences between these concentrations are used to assess the quality of the monitoring data as described in section 4.1.4 of this appendix.

3.2.3 Flow Rate Verification for Particulate Matter. A one-point flow rate verification check must be performed at least once every month on each automated analyzer used to measure PM_{10}, $PM_{10-2.5}$ and $PM_{2.5}$. The verification is made by checking the operational flow rate of the analyzer. If the verification is made in conjunction with a flow rate adjustment, it must be made prior to such flow rate adjustment. Randomization of the flow rate verification with respect to time of day, day of week, and routine service and adjustments is encouraged where possible. For the standard procedure, use a flow rate transfer standard certified in accordance with section 2.6 of this appendix to check the analyzer's normal flow rate. Care should be used in selecting and using the flow rate measurement device such that it does not alter the normal operating flow rate of the analyzer. Report the flow rate of the transfer standard and the corresponding flow rate measured (indicated) by the analyzer. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix (using flow rates in lieu of concentrations).

3.2.4 Semi-Annual Flow Rate Audit for Particulate Matter. Every 6 months, audit the flow rate of the PM_{10}, $PM_{10-2.5}$ and $PM_{2.5}$ particulate analyzers. Where possible, EPA strongly encourages more frequent auditing. The audit should (preferably) be conducted by a trained experienced technician other than the routine site operator. The audit is made by measuring the analyzer's normal operating flow rate using a flow rate transfer standard certified in accordance with section 2.6 of this appendix. The flow rate standard used for auditing must not be the same flow rate standard used to calibrate the analyzer. However, both the calibration standard and the audit standard may be referenced to the same primary flow rate or volume standard. Great care must be used in auditing the flow rate to be certain that the flow measurement device does not alter the normal operating flow rate of the analyzer. Report the audit flow rate of the transfer standard and the corresponding flow rate measured (indicated) by the analyzer. The percent differences between these flow rates are used to validate the one-point flow rate verification checks used to estimate bias as described in section 4.2.3 of this appendix.

3.2.5 Collocated Sampling Procedures for $PM_{2.5}$. For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the audit monitor.

3.2.5.1 Each EPA designated Federal reference method (FRM) or Federal equivalent method (FEM) within a primary quality assurance organization must:

(a) Have 15 percent of the monitors collocated (values of 0.5 and greater round up); and

(b) Have at least 1 collocated monitor (if the total number of monitors is less than 3). The first collocated monitor must be a designated FRM monitor.

3.2.5.2 In addition, monitors selected for collocation must also meet the following requirements:

(a) A primary monitor designated as an EPA FRM shall be collocated with an audit monitor having the same EPA FRM method designation.

(b) For each primary monitor model designated as an EPA FEM used by the PQAO, 50 percent of the monitors designated for collocation shall be collocated with an audit monitor having the same method designation and 50 percent of the monitors shall be collocated with an FRM audit monitor. If the primary quality assurance

organization only has one FEM monitor it shall be collocated with an FRM audit monitor. If there are an odd number of collocated monitors required, the additional monitor shall be an FRM audit monitor. An example of this procedure is found in Table A–3 of this appendix.

3.2.5.3 The collocated monitors should be deployed according to the following protocol:

(a) 80 percent of the collocated audit monitors should be deployed at sites with annual average or daily concentrations estimated to be within ±20 percent of the applicable NAAQS and the remainder at what the monitoring organizations designate as high value sites;

(b) If an organization has no sites with annual average or daily concentrations within ± 20 percent of the annual NAAQS (or 24-hour NAAQS if that is affecting the area), 60 percent of the collocated audit monitors should be deployed at those sites with the annual mean concentrations (or 24-hour NAAQS if that is affecting the area) among the highest 25 percent for all sites in the network.

3.2.5.4 In determining the number of collocated sites required for $PM_{2.5}$, monitoring networks for visibility assessments should not be treated independently from networks for particulate matter, as the separate networks may share one or more common samplers. However, for Class I visibility areas, EPA will accept visibility aerosol mass measurement instead of a $PM_{2.5}$ measurement if the latter measurement is unavailable. Any $PM_{2.5}$ monitoring site which does not have a monitor which is an EPA FRM, FEM or ARM is not required to be included in the number of sites which are used to determine the number of collocated monitors.

3.2.5.5 For each PSD monitoring network, one site must be collocated. A site with the predicted highest 24-hour pollutant concentration must be selected.

3.2.5.6 The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

3.2.5.7 Sample the collocated audit monitor for SLAMS sites on a 12-day schedule; sample PSD sites on a 6-day schedule or every third day for PSD daily monitors. If a primary quality assurance organization has only one collocated monitor, higher sampling frequencies than the 12-day schedule may be needed in order to produce about 25 valid sample pairs a year. Report the measurements from both primary and collocated audit monitors at each collocated sampling site. The calculations for evaluating precision between the two collocated monitors are described in section 4.3.1 of this appendix.

3.2.6 Collocated Sampling Procedures for $PM_{10-2.5}$. For the $PM_{10-2.5}$ network, all automated methods must be designated as Federal equivalent methods (FEMs). For each pair of collocated monitors, designate one sampler as the primary monitor whose concentrations will be used to report air quality for the site, and designate the other as the audit monitor.

3.2.6.1 The EPA shall ensure that each EPA designated FEM within the national $PM_{10-2.5}$ monitoring network must:

(a) Have 15 percent of the monitors collocated (values of 0.5 and greater round up); and

(b) Have at least 2 collocated monitors (if the total number of monitors is less than 10). The first collocated monitor must be a designated FRM monitor and the second must be a monitor of the same method designation. Both collocated FRM and FEM monitors can be located at the same site.

3.2.6.2 The Regional Administrator for the EPA Regions where the FEMs are implemented will select the sites for collocated monitoring. The site selection process shall consider giving priority to sites at primary quality assurance organizations or States with more than one $PM_{10-2.5}$ site, sites considered important from a regional perspective, and sites needed for an appropriate distribution among rural and urban NCore sites. Depending on the speed at which the $PM_{10-2.5}$ network is deployed, the first sites implementing FEMs shall be required to perform collocation until there is a larger distribution of FEM monitors implemented in the network.

3.2.6.3 The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. Calibration, sampling, and analysis must be the same for both collocated samplers and the same as for all other samplers in the network.

3.2.6.4 Sample the collocated audit monitor for SLAMS sites on a 12-day schedule. Report the measurements from both primary and collocated audit monitors at each collocated sampling site. The calculations for evaluating precision between the two collocated monitors are described in section 4.3.1 of this appendix.

3.2.7 $PM_{2.5}$ Performance Evaluation Program (PEP) Procedures. The PEP is an independent assessment used to estimate total measurement system bias. These evaluations will be performed under the PM Performance Evaluation Program (PEP) (section 2.4 of this appendix) or a comparable program. Performance evaluations will be performed on the SLAMS monitors annually within each primary quality assurance organization. For primary quality assurance organizations with less than or equal to five monitoring sites, five valid performance evaluation audits must be collected and reported each year. For primary quality assurance organizations with greater than five monitoring sites, eight valid performance evaluation audits must be collected and reported each year. A valid performance evaluation audit means that both the primary monitor and PEP audit concentrations are valid and above 3 $\mu g/m^3$. Additionally, each year, every designated FRM or FEM within a primary quality assurance organization must:

(1) Have each method designation evaluated each year; and,

(2) Have all FRM or FEM samplers subject to a PEP audit at least once every six years; which equates to approximately 15 percent of the monitoring sites audited each year.

(b) Additional information concerning the Performance Evaluation Program is contained in reference 10 of this appendix. The calculations for evaluating bias between the primary monitor and the performance evaluation monitor for $PM_{2.5}$ are described in section 4.3.2 of this appendix.

3.2.8 $PM_{10-2.5}$ Performance Evaluation Program. For the $PM_{10-2.5}$ network, all automated methods will be designated as federal equivalent methods (FEMs). One performance evaluation audit, as described in section 3.2.7 must be performed at one $PM_{10-2.5}$ site in each primary quality assurance organization each year. The calculations for evaluating bias between the primary monitor(s) and the performance evaluation monitors for $PM_{10-2.5}$ are described in section 4.1.3 of this appendix.

3.3 Measurement Quality Checks of Manual Methods. Table A–2 of this appendix provides a summary of the types and frequency of the measurement quality checks that will be described in this section.

3.3.1 Collocated Sampling Procedures for PM_{10}. For each network of manual PM_{10} methods, select 15 percent (or at least one) of the monitoring sites within the primary quality assurance organization for collocated sampling. For purposes of precision assessment, networks for measuring total suspended particulate (TSP) and PM_{10} shall be considered separately from one another. However, PM_{10} samplers used in the $PM_{10-2.5}$ network, may be counted along with the PM_{10} samplers in the PM_{10} network as long as the PM_{10} samplers in both networks are the same method designation. PM_{10} and TSP sites having annual mean particulate matter concentrations among the highest 25 percent of the annual mean concentrations for all the sites in the network must be selected or, if such sites are impractical, alternative sites approved by the EPA Regional Administrator may be selected.

3.3.1.1 In determining the number of collocated sites required for PM_{10}, monitoring networks for lead (Pb) should be treated independently from networks for particulate matter (PM), even though the separate networks may share one or more common samplers. However, a single pair of samplers collocated at a common-sampler monitoring site that meets the requirements for both a collocated Pb site and a collocated PM site may serve as a collocated site for both networks.

3.3.1.2 The two collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference. Calibration, sampling, analysis and verification/validation procedures must be the same for both collocated samplers and the same as for all other samplers in the network.

3.3.1.3 For each pair of collocated samplers, designate one sampler as the

primary sampler whose samples will be used to report air quality for the site, and designate the other as the audit sampler. Sample SLAMS sites on a 12-day schedule; sample PSD sites on a 6-day schedule or every third day for PSD daily samplers. If a primary quality assurance organization has only one collocated monitor, higher sampling frequencies than the 12-day schedule may be needed in order to produce approximately 25 valid sample pairs a year. Report the measurements from both samplers at each collocated sampling site. The calculations for evaluating precision between the two collocated samplers are described in section 4.2.1 of this appendix.

3.3.2 Flow Rate Verification for Particulate Matter. Follow the same procedure as described in section 3.2.3 of this appendix for $PM_{2.5}$, PM_{10} (low-volume instruments), and $PM_{10-2.5}$. High-volume PM_{10} and TSP instruments can also follow the procedure in section 3.2.3 but the audits are required to be conducted quarterly. The percent differences between the audit and measured flow rates are used to assess the bias of the monitoring data as described in section 4.2.2 of this appendix.

3.3.3 Semi-Annual Flow Rate Audit for Particulate Matter. Follow the same procedure as described in section 3.2.4 of this appendix for $PM_{2.5}$, PM_{10}, $PM_{10-2.5}$ and TSP instruments. The percent differences between these flow rates are used to validate the one-point flow rate verification checks used to estimate bias as described in section 4.2.3 of this appendix. Great care must be used in auditing high-volume particulate matter samplers having flow regulators because the introduction of resistance plates in the audit flow standard device can cause abnormal flow patterns at the point of flow sensing. For this reason, the flow audit standard should be used with a normal filter in place and without resistance plates in auditing flow-regulated high-volume samplers, or other steps should be taken to assure that flow patterns are not perturbed at the point of flow sensing.

3.3.4 Pb Methods.

3.3.4.1 Annual Flow Rate. For the Pb Reference Method (40 CFR part 50, appendix G), the flow rates of the high-volume Pb samplers shall be verified and audited using the same procedures described in sections 3.3.2 and 3.3.3 of this appendix.

3.3.4.2 Pb Strips. Each calendar quarter or sampling quarter (PSD), audit the Pb Reference Method analytical procedure using glass fiber filter strips containing a known quantity of Pb. These audit sample strips are prepared by depositing a Pb solution on unexposed glass fiber filter strips of dimensions 1.9 centimeters (cm) by 20.3 cm (¾ inch by 8 inch) and allowing them to dry thoroughly. The audit samples must be prepared using batches of reagents different from those used to calibrate the Pb analytical equipment being audited. Prepare audit samples in the following concentration ranges:

Range	Pb concentration, μg/strip	Equivalent ambient Pb concentration, μg/m³ [1]
1	100–300	0.5–1.5
2	400–1,000	3.0–5.0

[1] Equivalent ambient Pb concentration in μ/m³ is based on sampling at 1.7 m³/min for 24 hours on a 20.3 cm × 25.4 cm (8 inch × 10 inch) glass fiber filter.

(a) Audit samples must be extracted using the same extraction procedure used for exposed filters.

(b) Analyze three audit samples in each of the two ranges each quarter samples are analyzed. The audit sample analyses shall be distributed as much as possible over the entire calendar quarter.

(c) Report the audit concentrations (in μg Pb/strip) and the corresponding measured concentrations (in μg Pb/strip) using AQS unit code 077. The relative percent differences between the concentrations are used to calculate analytical accuracy as described in section 4.4.2 of this appendix.

(d) The audits of an equivalent Pb method are conducted and assessed in the same manner as for the reference method. The flow auditing device and Pb analysis audit samples must be compatible with the specific requirements of the equivalent method.

3.3.5 Collocated Sampling Procedures for $PM_{2.5}$. Follow the same procedure as described in section 3.2.5 of this appendix. $PM_{2.5}$ samplers used in the $PM_{10-2.5}$ network, may be counted along with the $PM_{2.5}$ samplers in the $PM_{2.5}$ network as long as the $PM_{2.5}$ samplers in both networks are the same method designation.

3.3.6 Collocated Sampling Procedures for $PM_{10-2.5}$. All designated FRMs within the $PM_{10-2.5}$ monitoring network must have 15 percent of the monitors collocated (values of 0.5 and greater round up) at the $PM_{10-2.5}$ sites. All FRM method designations can be aggregated.

3.3.6.1 The EPA shall ensure that each designated FEM within the $PM_{10-2.5}$ monitoring network must:

(a) Have 15 percent of the monitors collocated (values of 0.5 and greater round up); and

(b) Have at least 2 collocated monitors (if the total number of monitors is less than 10). The first collocated monitor must be a designated FRM monitor and the second must be a monitor of the same method designation. Both collocated FRM and FEM monitors can be located at the same site.

3.3.6.2 The Regional Administrator for the EPA Region where the FRM or FEMs are implemented will select the sites for collocated monitoring. The collocation site selection process shall consider sites at primary quality assurance organizations or States with more than one $PM_{10-2.5}$ site; primary quality assurance organizations already monitoring for PM_{10} and $PM_{2.5}$ using FRMs or FEMs; and an appropriate distribution among rural and urban NCore sites. Monitoring organizations implementing PM_{10} samplers and $PM_{2.5}$ FRM samplers of the same method designation as the $PM_{10-2.5}$ FRM can include the $PM_{10-2.5}$ monitors in their respective PM_{10} and $PM_{2.5}$ count. Follow the same procedures as described in sections 3.2.6.2 and 3.2.6.3 of this appendix.

3.3.7 $PM_{2.5}$ Performance Evaluation Program (PEP) Procedures. Follow the same procedure as described in section 3.2.7 of this appendix.

3.3.8 $PM_{10-2.5}$ Performance Evaluation Program (PEP) Procedures. One performance evaluation audit, as described in section 3.2.7 of this appendix must be performed at one $PM_{10-2.5}$ site in each primary quality assurance organization each year. Monitoring organizations implementing $PM_{2.5}$ FRM samplers of the same method designation in both the $PM_{2.5}$ and the $PM_{10-2.5}$ networks can include the $PM_{10-2.5}$ performance evaluation audit in their respective $PM_{2.5}$ performance evaluation count as long as the performance evaluation is conducted at the $PM_{10-2.5}$ site. The calculations for evaluating bias between the primary monitor(s) and the performance evaluation monitors for $PM_{10-2.5}$ are described in section 4.1.3 of this appendix.

4. Calculations for Data Quality Assessment

(a) Calculations of measurement uncertainty are carried out by EPA according to the following procedures. Primary quality assurance organizations should report the data for all appropriate measurement quality checks as specified in this appendix even though they may elect to perform some or all of the calculations in this section on their own.

(b) The EPA will provide annual assessments of data quality aggregated by site and primary quality assurance organization for SO_2, NO_2, O_3 and CO and by primary quality assurance organization for PM_{10}, $PM_{2.5}$, $PM_{10-2.5}$ and Pb.

(c) At low concentrations, agreement between the measurements of collocated samplers, expressed as relative percent difference or percent difference, may be relatively poor. For this reason, collocated measurement pairs are selected for use in the precision and bias calculations only when both measurements are equal to or above the following limits:

(1) TSP: 20 μg/m³.
(2) Pb: 0.15 μg/m³.
(3) PM_{10} (Hi-Vol): 15 μg/m³.
(4) PM_{10} (Lo-Vol): 3 μg/m³.
(5) $PM_{10-2.5}$ and $PM_{2.5}$: 3 μg/m³.

4.1 Statistics for the Assessment of QC Checks for SO_2, NO_2, O_3 and CO.

4.1.1 Percent Difference. All measurement quality checks start with a comparison of an audit concentration or value (flowrate) to the concentration/value measured by the analyzer and use percent difference as the comparison statistic as described in equation 1 of this section. For

each single point check, calculate the percent difference, d_i, as follows:

Equation 1

$$d_i = \frac{meas - audit}{audit} \times 100$$

where, *meas* is the concentration indicated by the monitoring organization's instrument and *audit* is the audit concentration of the standard used in the QC check being measured.

4.1.2 Precision Estimate. The precision estimate is used to assess the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.2.1 of this appendix. The precision estimator is the coefficient of variation upper bound and is calculated using equation 2 of this section:

Equation 2

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{n(n-1)}} \cdot \sqrt{\frac{n-1}{X^2_{0.1,n-1}}}$$

where, $X^2_{0.1,n-1}$ is the 10th percentile of a chi-squared distribution with n–1 degrees of freedom.

4.1.3 Bias Estimate. The bias estimate is calculated using the one-point QC checks for SO_2, NO_2, O_3, or CO described in section 3.2.1 of this appendix and the performance evaluation program for $PM_{10-2.5}$ described in sections 3.2.8 and 3.3.8 of this appendix. The bias estimator is an upper bound on the mean absolute value of the percent differences as described in equation 3 of this section:

Equation 3

$$|AB| = AB + t_{0.95,n-1} \cdot \frac{AS}{\sqrt{n}}$$

where, *n* is the number of single point checks being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n–1 degrees of freedom; the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this section:

Equation 4

$$AB = \frac{1}{n} \cdot \sum_{i=1}^{n} |d_i|$$

and the quantity *AS* is the standard deviation of the absolute value of the d_i's and is calculated using equation 5 of this section:

Equation 5

$$AS = \sqrt{\frac{n \cdot \sum_{i=1}^{n} |d_i|^2 - \left(\sum_{i=1}^{n} |d_i|\right)^2}{n(n-1)}}$$

4.1.3.1 Assigning a sign (positive/negative) to the bias estimate. Since the bias statistic as calculated in equation 3 of this appendix uses absolute values, it does not have a tendency (negative or positive bias) associated with it. A sign will be designated by rank ordering the percent differences of the QC check samples from a given site for a particular assessment interval.

4.1.3.2 Calculate the 25th and 75th percentiles of the percent differences for each site. The absolute bias upper bound should be flagged as positive if both percentiles are positive and negative if both percentiles are negative. The absolute bias upper bound would not be flagged if the 25th and 75th percentiles are of different signs.

4.1.4 Validation of Bias Using the one-point QC Checks. The annual performance evaluations for SO_2, NO_2, O_3, or CO described in section 3.2.2 of this appendix are used to verify the results obtained from the one-point QC checks and to validate those results across a range of concentration levels. To quantify this annually at the site level and at the 3-year primary quality assurance organization level, probability limits will be calculated from the one-point QC checks using equations 6 and 7 of this appendix:

Equation 6

$$\text{Upper Probability Limit} = m + 1.96 \cdot S$$

Equation 7

$$\text{Lower Probability Limit} = m - 1.96 \quad S$$

where, *m* is the mean (equation 8 of this appendix):

Equation 8

$$m = \frac{1}{k} \cdot \sum_{i=1}^{k} d_i$$

where, *k* is the total number of one point QC checks for the interval being evaluated and *S* is the standard deviation of the percent differences (equation 9 of this appendix) as follows:

Equation 9

$$S = \sqrt{\frac{k \cdot \sum_{i=1}^{k} d_i^2 - \left(\sum_{i=1}^{k} d_i\right)^2}{k(k-1)}}$$

4.1.5 Percent Difference. Percent differences for the performance evaluations, calculated using equation 1 of this appendix can be compared to the probability intervals for the respective site or at the primary quality assurance organization level. Ninety-five percent of the individual percent differences (all audit concentration levels) for the performance evaluations should be captured within the probability intervals for the primary quality assurance organization.

4.2 Statistics for the Assessment of PM_{10}.

4.2.1 Precision Estimate from Collocated Samplers. Precision is estimated via duplicate measurements from collocated samplers of the same type. It is recommended that the precision be aggregated at the primary quality assurance organization level quarterly, annually, and at the 3-year level. The data pair would only be considered valid if both concentrations are greater than the minimum values specified in section 4(c) of this appendix. For each collocated data pair, calculate the relative percent difference, d_i, using equation 10 of this appendix:

Equation 10

$$d_i = \frac{X_i - Y_i}{(X_i + Y_i)/2} \cdot 100$$

where, X_i is the concentration from the primary sampler and Y_i is the concentration value from the audit sampler. The coefficient of variation upper bound is calculated using the equation 11 of this appendix:

Equation 11

$$CV = \sqrt{\frac{n \cdot \sum_{i=1}^{n} d_i^2 - \left(\sum_{i=1}^{n} d_i\right)^2}{2n(n-1)}} \cdot \sqrt{\frac{n-1}{X^2_{0.1,n-1}}}$$

where, *n* is the number of valid data pairs being aggregated, and $X^2_{0.1.n-1}$ is the 10th percentile of a chi-squared distribution with n1 degrees of freedom. The factor of 2 in the denominator adjusts for the fact that each d_i is calculated from two values with error.

4.2.2 Bias Estimate Using One-Point Flow Rate Verifications. For each one-point flow rate verification described in sections 3.2.3 and 3.3.2 of this appendix, calculate the percent difference in volume using equation 1 of this appendix where *meas* is the value indicated by the sampler's volume measurement and *audit* is the actual volume indicated by the auditing flow meter. The absolute volume bias upper bound is then calculated using equation 3, where *n* is the number of flow rate audits being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n-1 degrees of freedom, the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this appendix , and the quantity *AS* in equation 3 of this appendix is the standard deviation of the absolute values if the d_i's and is calculated using equation 5 of this

4.2.3 Assessment Semi-Annual Flow Rate Audits. The flow rate audits described in sections 3.2.4 and 3.3.3 of this appendix are used to assess the results obtained from the one-point flow rate verifications and to provide an estimate of flow rate acceptability. For each flow rate audit, calculate the percent difference in volume using equation 1 of this appendix where *meas* is the value indicated by the sampler's volume measurement and *audit* is the actual volume indicated by the auditing flow meter. To quantify this annually and at the 3-year primary quality assurance organization level, probability limits are calculated from the percent differences using equations 6 and 7 of this appendix where *m* is the mean described in equation 8 of this appendix and *k* is the total number of one-point flow rate verifications for the year and *S* is the standard deviation of the percent differences as described in equation 9 of this appendix.

4.2.4 Percent Difference. Percent differences for the annual flow rate audit concentration, calculated using equation 1 of this appendix, can be compared to the probability intervals for the one-point flow rate verifications for the respective primary quality assurance organization. Ninety-five percent of the individual percent differences (all audit concentration levels) for the performance evaluations should be captured within the probability intervals for primary quality assurance organization.

4.3 Statistics for the Assessment of $PM_{2.5}$ and $PM_{10-2.5}$.

4.3.1 Precision Estimate. Precision for collocated instruments for $PM_{2.5}$ and $PM_{10-2.5}$ may be estimated where both the primary and collocated instruments are the same method designation and when the method designations are not similar. Follow the procedure described in section 4.2.1 of this appendix. In addition, one may want to perform an estimate of bias when the primary monitor is an FEM and the collocated monitor is an FRM. Follow the procedure described in section 4.1.3 of this appendix in order to provide an estimate of bias using the collocated data.

4.3.2 Bias Estimate. Follow the procedure described in section 4.1.3 of this appendix for the bias estimate of $PM_{10-2.5}$. The $PM_{2.5}$ bias estimate is calculated using the paired routine and the PEP monitor data described in section 3.2.6 of this appendix. Calculate the percent difference, d_i, using equation 1 of this appendix, where *meas* is the measured concentration from agency's primary monitor and *audit* is the concentration from the PEP monitor. The data pair would only be considered valid if both concentrations are greater than the minimum values specified in section 4(c) of this appendix. Estimates of bias are presented for various levels of aggregation, sometimes aggregating over time, sometimes aggregating over samplers, and sometimes aggregating over both time and samplers. These various levels of aggregation are achieved using the same basic statistic.

4.3.2.1 This statistic averages the individual biases described in equation 1 of this appendix to the desired level of aggregation using equation 12 of this appendix:

Equation 12

$$D = \frac{1}{n_j} \cdot \sum_{i=1}^{n_j} d_i$$

where, n_j is the number of pairs and d_1, d_2, d_{nj} are the biases for each of the pairs to be averaged.

4.3.2.2 Confidence intervals can be constructed for these average bias estimates in equation 12 of this appendix using equations 13 and 14 of this appendix:

Equation 13

$$\text{Upper 90\% Confidence Interval} = D + t_{0.95,df} \cdot \frac{s}{\sqrt{n_j}}$$

Equation 14

$$\text{Lower 90\% Confidence Interval} = D - t_{0.95,df} \cdot \frac{s}{\sqrt{n_j}}$$

Where, $t_{0.95,df}$ is the 95th quantile of a t-distribution with degrees of freedom $df = n_j - 1$ and *s* is an estimate of the variability of the average bias calculated using equation 15 of this appendix:

Equation 15

$$s = \sqrt{\frac{\sum_{i=1}^{n_j} (d_i - D)^2}{n_j - 1}}$$

4.4 Statistics for the Assessment of Pb.

4.4.1 Precision Estimate. Follow the same procedures as described for PM_{10} in section 4.2.1 of this appendix using the data from the collocated instruments. The data pair would only be considered valid if both concentrations are greater than the minimum values specified in section 4(c) of this appendix.

4.4.2 Bias Estimate. In order to estimate bias, the information from the flow rate audits and the Pb strip audits needs to be combined as described below. To be consistent with the formulas for the gases, the recommended procedures are to work with relative errors of the lead measurements. The relative error in the concentration is related to the relative error in the volume and the relative error in the mass measurements using equation 16 of this appendix:

Equation 16

$$\text{rel. error} = \frac{(\text{measured concentration} - \text{audit concentration})}{\text{audit concentration}} = \left(\frac{1}{1 + \text{rel. error}}\right)(\text{rel. mass error} - \text{rel. volume error})$$

As with the gases, an upper bound for the absolute bias is desired. Using equation 16 above, the absolute value of the relative (concentration) error is bounded by equation 17 of this appendix:

Equation 17

$$|\text{rel. error}| \le \frac{|\text{relative mass error}| + |\text{relative volume error}|}{1 - |\text{relative volume error}|}$$

The quality indicator data collected are then used to bound each part of equation 17 separately.

4.4.2.1 Flow rate calculations. For each flow rate audit, calculate the percent difference in volume by equation 1 of this appendix where *meas* is the value indicated by the sampler's volume measurement and *audit* is the actual volume indicated by the auditing flow meter. The absolute volume bias upper bound is then calculated using equation 3 of this appendix where *n* is the number of flow rate audits being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n–1 degrees of freedom; the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4, and the quantity *AS* in equation 3 of this appendix is the standard deviation of the absolute values of the d_i's and is calculated using equation 5 of this appendix.

4.4.2.2 Lead strip calculations. Similarly for each lead strip audit, calculate the percent difference in mass by equation 1 where *meas* is the value indicated by the mass measurement and *audit* is the actual lead mass on the audit strip. The absolute mass bias upper bound is then calculated using equation 3 of this appendix where *n* is the number of lead strip audits being aggregated; $t_{0.95,n-1}$ is the 95th quantile of a t-distribution with n–1 degrees of freedom; the quantity *AB* is the mean of the absolute values of the d_i's and is calculated using equation 4 of this appendix and the quantity *AS* in equation 3 of this appendix is the standard deviation of the absolute values of the d_i's and is calculated using equation 5 of this appendix.

4.4.2.3 Final bias calculation. Finally, the absolute bias upper bound is given by combining the absolute bias estimates of the flow rate and Pb strips using equation 18 of this appendix:

Equation 18

$$|\text{bias}| = \frac{|\text{mass bias}| + |\text{vol. bias}|}{100 - |\text{vol. bias}|} \cdot 100$$

where, the numerator and denominator have been multiplied by 100 since everything is expressed as a percentage.

4.5 Time Period for Audits. The statistics in this section assume that the mass and flow rate audits represent the same time period. Since the two types of audits are not performed at the same time, the audits need to be grouped by common time periods. Consequently, the absolute bias estimates should be done on annual and 3-year levels. The flow rate audits are site-specific, so the absolute bias upper bound estimate can be done and treated as a site-level statistic.

5. Reporting Requirements

5.1 SLAMS Reporting Requirements. For each pollutant, prepare a list of all monitoring sites and their AQS site identification codes in each primary quality assurance organization and submit the list to the appropriate EPA Regional Office, with a copy to AQS. Whenever there is a change in this list of monitoring sites in a primary quality assurance organization, report this change to the EPA Regional Office and to AQS.

5.1.1 Quarterly Reports. For each quarter, each primary quality assurance organization shall report to AQS directly (or via the appropriate EPA Regional Office for organizations not direct users of AQS) the results of all valid measurement quality checks it has carried out during the quarter. The quarterly reports must be submitted consistent with the data reporting requirements specified for air quality data as set forth in § 58.16. The EPA strongly encourages early submission of the quality assurance data in order to assist the monitoring organizations control and evaluate the quality of the ambient air data.

5.1.2 Annual Reports.

5.1.2.1 When the monitoring organization has certified relevant data for the calendar year, EPA will calculate and report the measurement uncertainty for the entire calendar year.

5.2 PSD Reporting Requirements. At the end of each sampling quarter, the organization must report the appropriate statistical assessments in section 4 of this appendix for the pollutants measured. All data used to calculate reported estimates of precision and bias including span checks, collocated sampler and audit results must be made available to the permit granting authority upon request.

6.0 References

(1) American National Standard—Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs. ANSI/ASQC E4–2004. February 2004. Available from American Society for Quality Control, 611 East Wisconsin Avenue, Milwaukee, WI 53202.

(2) EPA Requirements for Quality Management Plans. EPA QA/R–2. EPA/240/B–01/002. March 2001. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/r2-final.pdf.*

(3) EPA Requirements for Quality Assurance Project Plans for Environmental Data Operations. EPA QA/R–5. EPA/240/B–01/003. March 2001. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/r5-final.pdf.*

(4) EPA Traceability Protocol for Assay and Certification of Gaseous Calibration Standards. EPA–600/R–97/121. September 1997. Available from U.S. Environmental Protection Agency, ORD Publications Office, Center for Environmental Research Information (CERI), 26 W. Martin Luther King Drive, Cincinnati, OH 45268.

(5) Guidance for the Data Quality Objectives Process. EPA QA/G–4. EPA/240/B–06/001. February, 2006. Office of Environmental Information, Washington DC 20460. *http://www.epa.gov/quality/qs-docs/g4-final.pdf.*

(6) List of Designated Reference and Equivalent Methods. Available from U.S. Environmental Protection Agency, National Exposure Research Laboratory, Human Exposure and Atmospheric Sciences Division, MD-D205–03, Research Triangle Park, NC 27711. *http://www.epa.gov/ttn/amtic/criteria.html.*

(7) McElroy, F.F. Transfer Standards for the Calibration of Ambient Air Monitoring Analyzers for Ozone. EPA–600/4–79–056. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979. *http://www.epa.gov/ttn/amtic/cpreldoc.html.*

(8) Paur, R.J. and F.F. McElroy. Technical Assistance Document for the Calibration of Ambient Ozone Monitors. EPA–600/4–79–057. U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, September, 1979. *http://www.epa.gov/ttn/amtic/cpreldoc.html.*

(9) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume 1—A Field Guide to Environmental Quality Assurance. EPA–600/R–94/038a. April 1994. Available from U.S. Environmental Protection Agency, ORD Publications Office, Center for Environmental Research Information (CERI), 26 W. Martin Luther King Drive, Cincinnati, OH 45268. *http://www.epa.gov/ ttn/amtic/qabook.html.*

(10) Quality Assurance Handbook for Air Pollution Measurement Systems, Volume II: Part 1—Ambient Air Quality Monitoring Program Quality System Development. EPA–454/R–98–004. *http://www.epa.gov/ttn/amtic/qabook.html.*

TABLE A–1 OF APPENDIX A TO PART 58. DIFFERENCE AND SIMILARITIES BETWEEN SLAMS AND PSD REQUIREMENTS

Topic	SLAMS	PSD
Requirements	1. The development, documentation, and implementation of an approved quality system. 2. The assessment of data quality 3. The use of reference, equivalent, or approved methods 4. The use of calibration standards traceable to NIST or other primary standard. 5. The participation in EPA performance evaluations and the permission for EPA to conduct system audits.	
Monitoring and QA Responsibility	State/local agency via the "primary quality assurance organization".	Source owner/operator.
Monitoring Duration	Indefinitely	Usually up to 12 months.
Annual Performance Evaluation (PE)	Standards and equipment different from those used for spanning, calibration, and verifications. Prefer different personnel.	Personnel, standards and equipment different from those used for spanning, calibration, and verifications.
PE audit rate:		
—Automated	100% per year	100% per quarter.
—Manual	Varies depending on pollutant. See Table A–2 of this appendix.	100% per quarter.
Precision Assessment:		
—Automated	One-point QC check biweekly but data quality dependent	One point QC check biweekly.
—Manual	Varies depending on pollutant. See Table A–2 of this appendix.	One site: 1 every 6 days or every third day for daily monitoring (TSP and Pb).
Reporting		
—Automated	By site—EPA performs calculations annually	By site—source owner/operator performs calculations each sampling quarter.
—Manual	By reporting organization—EPA performs calculations annually.	By site—source owner/operator performs calculations each sampling quarter.

TABLE A–2 OF APPENDIX A TO PART 58. MINIMUM DATA ASSESSMENT REQUIREMENTS FOR SLAMS SITES

Method	Assessment method	Coverage	Minimum frequency	Parameters reported
Automated Methods				
1-Point QC for SO_2, NO_2, O_3, CO.	Response check at concentration 0.01–0.1 ppm SO_2, NO_2, O_3, and 1–10 ppm CO.	Each analyzer	Once per 2 weeks	Audit concentration [1] and measured concentration [2].
Annual performance evaluation for SO_2, NO_2, O_3, CO.	See section 3.2.2 of this appendix.	Each analyzer	Once per year	Audit concentration [1] and measured concentration [2] for each level.
Flow rate verification PM_{10}, $PM_{2.5}$, $PM_{10-2.5}$.	Check of sampler flow rate	Each sampler	Once every month	Audit flow rate and measured flow rate indicated by the sampler.
Semi-annual flow rate audit PM_{10}, $PM_{2.5}$, $PM_{10-2.5}$.	Check of sampler flow rate using independent standard.	Each sampler	Once every 6	Audit flow rate and measured flow rate indicated by the sampler.
Collocated sampling $PM_{2.5}$, $PM_{10-2.5}$.	Collocated samplers	15%	Every 12 days	Primary sampler concentration and duplicate sampler concentration.
Performance evaluation program $PM_{2.5}$, $PM_{10-2.5}$.	Collocated samplers	1. 5 valid audits for primary QA orgs, with ≤ 5 sites. 2. 8 valid audits for primary QA orgs, with > 5 sites. 3. All samplers in 6 years	Over all 4 quarters	Primary sampler concentration and performance evaluation sampler concentration.
Manual Methods				
Collocated sampling PM_{10}, TSP, $PM_{10-2.5}$, $PM_{2.5}$.	Collocated samplers	15%	Every 12 days PSD—every 6 days.	Primary sampler concentration and duplicate sampler concentration.
Flow rate verification PM_{10} (low Vol), $PM_{10-2.5}$, $PM_{2.5}$.	Check of sampler flow rate	Each sampler	Once every month	Audit flow rate and measured flow rate indicated by the sampler.

TABLE A–2 OF APPENDIX A TO PART 58. MINIMUM DATA ASSESSMENT REQUIREMENTS FOR SLAMS SITES—Continued

Method	Assessment method	Coverage	Minimum frequency	Parameters reported
Flow rate verification PM_{10} (High-Vol), TSP.	Check of sampler flow rate	Each sampler	Once every quarter	Audit flow rate and measured flow rate indicated by the sampler.
Semi-annual flow rate audit PM_{10}, TSP, $PM_{10-2.5}$, $PM_{2.5}$.	Check of sampler flow rate using independent standard.	Each sampler, all locations	Once every 6 months	Audit flow rate and measured flow rate indicated by the sampler.
Manual Methods Lead	1. Check of sample flow rate as for TSP. 2. Check of analytical system with Pb audit strips.	1. Each sampler 2. Analytical	1. Include with TSP 2. Each quarter	1. Same as for TSP. 2. Actual concentration.
Performance evaluation program $PM_{2.5}$, $PM_{10-2.5}$.	Collocated samplers	1. 5 valid audits for primary QA orgs, with ≤ 5 sites. 2. 8 valid audits for primary QA orgs, with ≥ 5 sites. 3. All samplers in 6 years	Over all 4 quarters	Primary sampler concentration and performance evaluation sampler concentration.

[1] Effective concentration for open path analyzers.
[2] Corrected concentration, if applicable, for open path analyzers.

TABLE A–3 OF APPENDIX A TO PART 58.—SUMMARY OF $PM_{2.5}$ NUMBER AND TYPE OF COLLOCATION (15% COLLOCATION REQUIREMENT) NEEDED AS AN EXAMPLE OF A PRIMARY QUALITY ASSURANCE ORGANIZATION THAT HAS 54 MONITORS AND PROCURED FRMS AND THREE OTHER EQUIVALENT METHOD TYPES

Primary sampler method designation	Total no. of monitors	Total no. collocated	No. of collocated FRM	No. of collocated monitors of same method designation as primary
FRM	20	3	3	n/a
FEM (A)	20	3	2	1
FEM (C)	2	1	1	0
FEM (D)	12	2	1	1

Appendix B—[Removed and Reserved]

34. Appendix B to part 58 is removed and reserved
35. Appendix C to part 58 is revised to read as follows:

Appendix C to Part 58—Ambient Air Quality Monitoring Methodology

1.0 Purpose
2.0 SLAMS Ambient Air Monitoring Stations
3.0 NCore Ambient Air Monitoring Stations
4.0 Photochemical Assessment Monitoring Stations (PAMS)
5.0 Particulate Matter Episode Monitoring
6.0 References

1.0 Purpose

This appendix specifies the criteria pollutant monitoring methods (manual methods or automated analyzers) which must be used in SLAMS and NCore stations that are a subset of SLAMS.

2.0 SLAMS Ambient Air Monitoring Network

2.1 Except as otherwise provided in this appendix, a criteria pollutant monitoring method used for making NAAQS decisions at a SLAMS site must be a reference or equivalent method as defined in § 50.1 of this chapter.

2.2 Reserved

2.3 Any manual method or analyzer purchased prior to cancellation of its reference or equivalent method designation under § 53.11 or § 53.16 of this chapter may be used at a SLAMS site following cancellation for a reasonable period of time to be determined by the Administrator.

2.4 Approval of Non-designated Continuous $PM_{2.5}$ Methods as Approved Regional Methods (ARMs) Operated Within a Network of Sites. A method for $PM_{2.5}$ that has not been designated as an FRM or FEM as defined in § 50.1 of this chapter may be approved as an ARM for purposes of section 2.1 of this appendix at a particular site or network of sites under the following stipulations.

2.4.1 The candidate ARM must be demonstrated to meet the requirements for $PM_{2.5}$ Class III equivalent methods as defined in subpart C of part 53 of this chapter. Specifically the requirements for precision, correlation, and additive and multiplicative bias apply. For purposes of this section 2.4, the following requirements shall apply:

2.4.1.1 The candidate ARM shall be tested at the site(s) in which it is intended to be used. For a network of sites operated by one reporting agency or primary quality assurance organization, the testing shall occur at a subset of sites to include one site in each MSA/CSA, up to the first 2 highest population MSA/CSA and at least one rural area or Micropolitan Statistical Area site. If the candidate ARM for a network is already approved for purposes of this section in another agency's network, subsequent testing shall minimally occur at one site in a MSA/CSA and one rural area or Micropolitan Statistical Area. There shall be no requirement for tests at any other sites.

2.4.1.2 For purposes of this section, a full year of testing may begin and end in any season, so long as all seasons are covered.

2.4.1.3 No PM_{10} samplers shall be required for the test, as determination of the $PM_{2.5}/PM_{10}$ ratio at the test site shall not be required.

2.4.1.4 The test specification for $PM_{2.5}$ Class III equivalent method precision defined in subpart C of part 53 of this chapter applies; however, there is no specific requirement that collocated continuous monitors be operated for purposes of generating a statistic for coefficient of variation (CV). To provide an estimate of precision that meets the requirement identified in subpart C of part 53 of this chapter, agencies may cite peer-reviewed published data or data in AQS that can be presented demonstrating the candidate ARM operated will produce data that meets the specification for precision of Class III $PM_{2.5}$ methods.

2.4.1.5 A minimum of 90 valid sample pairs per site for the year with no less than 20 valid sample pairs per season must be generated for use in demonstrating that additive bias, multiplicative bias and correlation meet the comparability requirements specified in subpart C of part 53 of this chapter. A valid sample pair may be generated with as little as one valid FRM and one valid candidate ARM measurement per day.

2.4.1.6 For purposes of determining bias, FRM data with concentrations less than 3 micrograms per cubic meter (μg/m^3) may be excluded. Exclusion of data does not result in failure of sample completeness specified in this section.

2.4.1.7 Data transformations are allowed to be used to demonstrate meeting the comparability requirements specified in subpart C of part 53 of this chapter. Data transformation may be linear or non-linear, but must be applied in the same way to all sites used in the testing.

2.4.2 The monitoring agency wishing to use an ARM must develop and implement appropriate quality assurance procedures for the method. Additionally, the following procedures are required for the method:

2.4.2.1 The ARM must be consistently operated throughout the network. Exceptions to a consistent operation must be approved according to section 2.8 of this appendix;

2.4.2.2 The ARM must be operated on an hourly sampling frequency capable of providing data suitable for aggregation into daily 24-hour average measurements;

2.4.2.3 The ARM must use an inlet and separation device, as needed, that are already approved in either the reference method identified in appendix L to part 50 of this chapter or under part 53 of this chapter as approved for use on a $PM_{2.5}$ reference or equivalent method. The only exceptions to this requirement are those methods that by their inherent measurement principle may not need an inlet or separation device that segregates the aerosol; and

2.4.2.4 The ARM must be capable of providing for flow audits, unless by its inherent measurement principle, measured flow is not required. These flow audits are to be performed on the frequency identified in appendix A to this part.

2.4.2.5 If data transformations are used, they must be described in the monitoring agencies Quality Assurance Project plan (or addendum to QAPP). The QAPP shall describe how often (e.g., quarterly, yearly) and under what provisions the data transformation will be updated. For example, not meeting the data quality objectives for a site over a season or year may be cause for recalculating a data transformation, but by itself would not be cause for invalidating the data. Data transformations must be applied prospectively, i.e., in real-time or near real-time, to the data output from the $PM_{2.5}$ continuous method. See reference 7 of this appendix.

2.4.3 The monitoring agency wishing to use the method must develop and implement appropriate procedures for assessing and reporting the precision and accuracy of the method comparable to the procedures set forth in appendix A of this part for designated reference and equivalent methods.

2.4.4 Assessments of data quality shall follow the same frequencies and calculations as required under section 3 of appendix A to this part with the following exceptions:

2.4.4.1 Collocation of ARM with FRM/FEM samplers must be maintained at a minimum of 30 percent of the required SLAMS sites with a minimum of 1 per network;

2.4.4.2 All collocated FRM/FEM samplers must maintain a sample frequency of at least 1 in 6 sample days;

2.4.4.3 Collocated FRM/FEM samplers shall be located at the design value site, with the required FRM/FEM samplers deployed among the largest MSA/CSA in the network, until all required FRM/FEM are deployed; and

2.4.4.4 Data from collocated FRM/FEM are to be substituted for any calendar quarter that an ARM method has incomplete data.

2.4.4.5 Collocation with an ARM under this part for purposes of determining the coefficient of variation of the method shall be conducted at a minimum of 7.5 percent of the sites with a minimum of 1 per network. This is consistent with the requirements in appendix A to this part for one-half of the required collocation of FRM/FEM (15 percent) to be collocated with the same method.

2.4.4.6 Assessments of bias with an independent audit of the total measurement system shall be conducted with the same frequency as an FEM as identified in appendix A to this part.

2.4.5 Request for approval of a candidate ARM, that is not already approved in another agency's network under this section, must meet the general submittal requirements of section 2.7 of this appendix. Requests for approval under this section when an ARM is already approved in another agency's network are to be submitted to the EPA Regional Administrator. Requests for approval under section 2.4 of this appendix must include the following requirements:

2.4.5.1 A clear and unique description of the site(s) at which the candidate ARM will be used and tested, and a description of the nature or character of the site and the particulate matter that is expected to occur there.

2.4.5.2 A detailed description of the method and the nature of the sampler or analyzer upon which it is based.

2.4.5.3 A brief statement of the reason or rationale for requesting the approval.

2.4.5.4 A detailed description of the quality assurance procedures that have been developed and that will be implemented for the method.

2.4.5.5 A detailed description of the procedures for assessing the precision and accuracy of the method that will be implemented for reporting to AQS.

2.4.5.6 Test results from the comparability tests as required in section 2.4.1 through 2.4.1.4 of this appendix.

2.4.5.7 Such further supplemental information as may be necessary or helpful to support the required statements and test results.

2.4.6 Within 120 days after receiving a request for approval of the use of an ARM at a particular site or network of sites under section 2.4 of this appendix, the Administrator will approve or disapprove the method by letter to the person or agency requesting such approval. When appropriate for methods that are already approved in another SLAMS network, the EPA Regional Administrator has approval/disapproval authority. In either instance, additional information may be requested to assist with the decision.

2.5 [Reserved]

2.6 Use of Methods With Higher, Nonconforming Ranges in Certain Geographical Areas.

2.6.1 [Reserved]

2.6.2 An analyzer may be used (indefinitely) on a range which extends to concentrations higher than two times the upper limit specified in table B–1 of part 53 of this chapter if:

2.6.2.1 The analyzer has more than one selectable range and has been designated as a reference or equivalent method on at least one of its ranges, or has been approved for use under section 2.5 (which applies to analyzers purchased before February 18, 1975);

2.6.2.2 The pollutant intended to be measured with the analyzer is likely to occur in concentrations more than two times the upper range limit specified in table B–1 of part 53 of this chapter in the geographical area in which use of the analyzer is proposed; and

2.6.2.3 The Administrator determines that the resolution of the range or ranges for which approval is sought is adequate for its intended use. For purposes of this section (2.6), ''resolution'' means the ability of the analyzer to detect small changes in concentration.

2.6.3 Requests for approval under section 2.6.2 of this appendix must meet the submittal requirements of section 2.7. Except as provided in section 2.7.3 of this appendix, each request must contain the information specified in section 2.7.2 in addition to the following:

2.6.3.1 The range or ranges proposed to be used;

2.6.3.2 Test data, records, calculations, and test results as specified in section 2.7.2.2 of this appendix for each range proposed to be used;

2.6.3.3 An identification and description of the geographical area in which use of the analyzer is proposed;

2.6.3.4 Data or other information demonstrating that the pollutant intended to be measured with the analyzer is likely to occur in concentrations more than two times the upper range limit specified in table B–1 of part 53 of this chapter in the geographical area in which use of the analyzer is proposed; and

2.6.3.5 Test data or other information demonstrating the resolution of each proposed range that is broader than that permitted by section 2.5 of this appendix.

2.6.4 Any person who has obtained approval of a request under this section (2.6.2) shall assure that the analyzer for which approval was obtained is used only in the geographical area identified in the request and only while operated in the range or ranges specified in the request.

2.7 Requests for Approval; Withdrawal of Approval.

2.7.1 Requests for approval under sections 2.4, 2.6.2, or 2.8 of this appendix must be submitted to: Director, National Exposure Research Laboratory (MD–D205–03), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For ARM that are already approved in another agency's network, subsequent

requests for approval under section 2.4 are to be submitted to the applicable EPA Regional Administrator.

2.7.2 Except as provided in section 2.7.3 of this appendix, each request must contain:

2.7.2.1 A statement identifying the analyzer (e.g., by serial number) and the method of which the analyzer is representative (e.g., by manufacturer and model number); and

2.7.2.2 Test data, records, calculations, and test results for the analyzer (or the method of which the analyzer is representative) as specified in subpart B, subpart C, or both (as applicable) of part 53 of this chapter.

2.7.3 A request may concern more than one analyzer or geographical area and may incorporate by reference any data or other information known to EPA from one or more of the following:

2.7.3.1 An application for a reference or equivalent method determination submitted to EPA for the method of which the analyzer is representative, or testing conducted by the applicant or by EPA in connection with such an application;

2.7.3.2 Testing of the method of which the analyzer is representative at the initiative of the Administrator under § 53.7 of this chapter; or

2.7.3.3 A previous or concurrent request for approval submitted to EPA under this section (2.7).

2.7.4 To the extent that such incorporation by reference provides data or information required by this section (2.7) or by sections 2.4, 2.5, or 2.6 of this appendix, independent data or duplicative information need not be submitted.

2.7.5 After receiving a request under this section (2.7), the Administrator may request such additional testing or information or conduct such tests as may be necessary in his judgment for a decision on the request.

2.7.6 If the Administrator determines, on the basis of any available information, that any of the determinations or statements on which approval of a request under this section was based are invalid or no longer valid, or that the requirements of section 2.4, 2.5, or 2.6, as applicable, have not been met, he/she may withdraw the approval after affording the person who obtained the approval an opportunity to submit information and arguments opposing such action.

2.8 Modifications of Methods by Users.

2.8.1 Except as otherwise provided in this section, no reference method, equivalent method, or ARM may be used in a SLAMS network if it has been modified in a manner that could significantly alter the performance characteristics of the method without prior approval by the Administrator. For purposes of this section, ''alternative method'' means an analyzer, the use of which has been approved under section 2.4, 2.5, or 2.6 of this appendix or some combination thereof.

2.8.2 Requests for approval under this section (2.8) must meet the submittal requirements of sections 2.7.1 and 2.7.2.1 of this appendix.

2.8.3 Each request submitted under this section (2.8) must include:

2.8.3.1 A description, in such detail as may be appropriate, of the desired modification;

2.8.3.2 A brief statement of the purpose(s) of the modification, including any reasons for considering it necessary or advantageous;

2.8.3.3 A brief statement of belief concerning the extent to which the modification will or may affect the performance characteristics of the method; and

2.8.3.4 Such further information as may be necessary to explain and support the statements required by sections 2.8.3.2 and 2.8.3.3.

2.8.4 The Administrator will approve or disapprove the modification by letter to the person or agency requesting such approval within 75 days after receiving a request for approval under this section and any further information that the applicant may be asked to provide.

2.8.5 A temporary modification that could alter the performance characteristics of a reference, equivalent, or ARM may be made without prior approval under this section if the method is not functioning or is malfunctioning, provided that parts necessary for repair in accordance with the applicable operation manual cannot be obtained within 45 days. Unless such temporary modification is later approved under section 2.8.4 of this appendix, the temporarily modified method shall be repaired in accordance with the applicable operation manual as quickly as practicable but in no event later than 4 months after the temporary modification was made, unless an extension of time is granted by the Administrator. Unless and until the temporary modification is approved, air quality data obtained with the method as temporarily modified must be clearly identified as such when submitted in accordance with § 58.16 and must be accompanied by a report containing the information specified in section 2.8.3 of this appendix. A request that the Administrator approve a temporary modification may be submitted in accordance with sections 2.8.1 through 2.8.4 of this appendix. In such cases the request will be considered as if a request for prior approval had been made.

2.9 Use of IMPROVE Samplers at a SLAMS Site. ''IMPROVE'' samplers may be used in SLAMS for monitoring of regional background and regional transport concentrations of fine particulate matter. The IMPROVE samplers were developed for use in the Interagency Monitoring of Protected Visual Environments (IMPROVE) network to characterize all of the major components and many trace constituents of the particulate matter that impair visibility in Federal Class I Areas. Descriptions of the IMPROVE samplers and the data they collect are available in references 4, 5, and 6 of this appendix.

3.0 NCore Ambient Air Monitoring Stations

3.1 Methods employed in NCore multipollutant sites used to measure SO_2, CO, NO_2, O_3, $PM_{2.5}$, or $PM_{10-2.5}$ must be reference or equivalent methods as defined in § 50.1 of this chapter, or an ARM as defined in section 2.4 of this appendix, for any monitors intended for comparison with applicable NAAQS.

3.2 If alternative SO_2, CO, NO_2, O_3, $PM_{2.5}$, or $PM_{10-2.5}$ monitoring methodologies are proposed for monitors not intended for NAAQS comparison, such techniques must be detailed in the network description required by § 58.10 and subsequently approved by the Administrator. Examples of locations that are not intended to be compared to the NAAQS may be rural background and transport sites or areas where the concentration of the pollutant is so low that it would be more useful to operate a higher sensitivity method that is not an FRM or FEM.

4.0 Photochemical Assessment Monitoring Stations (PAMS)

4.1 Methods used for O_3 monitoring at PAMS must be automated reference or equivalent methods as defined in § 50.1 of this chapter.

4.2 Methods used for NO, NO_2 and NO_X monitoring at PAMS should be automated reference or equivalent methods as defined for NO_2 in § 50.1 of this chapter. If alternative NO, NO_2 or NO_X monitoring methodologies are proposed, such techniques must be detailed in the network description required by § 58.10 and subsequently approved by the Administrator.

4.3 Methods for meteorological measurements and speciated VOC monitoring are included in the guidance provided in references 2 and 3 of this appendix. If alternative VOC monitoring methodology (including the use of new or innovative technologies), which is not included in the guidance, is proposed, it must be detailed in the network description required by § 58.10 and subsequently approved by the Administrator.

5.0 Particulate Matter Episode Monitoring

5.1 For short-term measurements of PM_{10} during air pollution episodes (see § 51.152 of this chapter) the measurement method must be:

5.1.1 Either the ''Staggered PM_{10}'' method or the ''PM_{10} Sampling Over Short Sampling Times'' method, both of which are based on the reference method for PM_{10} and are described in reference 1: or

5.1.2 Any other method for measuring PM_{10}:

5.1.2.1 Which has a measurement range or ranges appropriate to accurately measure air pollution episode concentration of PM_{10},

5.1.2.2 Which has a sample period appropriate for short-term PM_{10} measurements, and

5.1.2.3 For which a quantitative relationship to a reference or equivalent method for PM_{10} has been established at the use site. Procedures for establishing a quantitative site-specific relationship are contained in reference 1.

5.2 PM_{10} methods other than the reference method are not covered under the quality assessment requirements of appendix to this part. Therefore, States must develop and implement their own quality assessment procedures for those methods allowed under this section 4. These quality assessment procedures should be similar or analogous to

those described in section 3 of appendix A to this part for the PM_{10} reference method.

6.0 References

1. Pelton, D. J. Guideline for Particulate Episode Monitoring Methods, GEOMET Technologies, Inc., Rockville, MD. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68–02–3584. EPA 450/4–83–005. February 1983.

2. Technical Assistance Document For Sampling and Analysis of Ozone Precursors. Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. EPA 600/8–91–215. October 1991.

3. Quality Assurance Handbook for Air Pollution Measurement Systems: Volume IV. Meteorological Measurements. Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. EPA 600/4–90–0003. August 1989.

4. Eldred, R.A., Cahill, T.A., Wilkenson, L.K., *et al.,* Measurements of fine particles and their chemical components in the IMPROVE/NPS networks, in Transactions of the International Specialty Conference on Visibility and Fine Particles, Air and Waste Management Association: Pittsburgh, PA, 1990; pp. 187–196.

5. Sisler, J.F., Huffman, D., and Latimer, D.A.; Spatial and temporal patterns and the chemical composition of the haze in the United States: An analysis of data from the IMPROVE network, 1988–1991, ISSN No. 0737–5253–26, National Park Service, Ft. Collins, CO, 1993.

6. Eldred, R.A., Cahill, T.A., Pitchford, M., and Malm, W.C.; IMPROVE—a new remote area particulate monitoring system for visibility studies, Proceedings of the 81st Annual Meeting of the Air Pollution Control Association, Dallas, Paper 88–54.3, 1988.

7. Data Quality Objectives (DQOs) for Relating Federal Reference Method (FRM) and Continuous $PM_{2.5}$ Measurements to Report an Air Quality Index (AQI). Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. EPA 454/B–02–2002. November 2002.

36. Appendix D to part 58 is revised to read as follows:

Appendix D to Part 58—Network Design Criteria for Ambient Air Quality Monitoring

1. Monitoring Objectives and Spatial Scales
2. General Monitoring Requirements
3. Design Criteria for NCore Sites
4. Pollutant-Specific Design Criteria for SLAMS Sites
5. Design Criteria for Photochemical Assessment Monitoring Stations (PAMS)
6. References

1. Monitoring Objectives and Spatial Scales

The purpose of this appendix is to describe monitoring objectives and general criteria to be applied in establishing the required SLAMS ambient air quality monitoring stations and for choosing general locations for additional monitoring sites. This appendix also describes specific requirements for the number and location of FRM, FEM, and ARM sites for specific pollutants, NCore multipollutant sites, PM_{10} mass sites, $PM_{2.5}$ mass sites, chemically-speciated $PM_{2.5}$ sites, and O_3 precursor measurements sites (PAMS). These criteria will be used by EPA in evaluating the adequacy of the air pollutant monitoring networks.

1.1 Monitoring Objectives. The ambient air monitoring networks must be designed to meet three basic monitoring objectives. These basic objectives are listed below. The appearance of any one objective in the order of this list is not based upon a prioritized scheme. Each objective is important and must be considered individually.

(a) Provide air pollution data to the general public in a timely manner. Data can be presented to the public in a number of attractive ways including through air quality maps, newspapers, Internet sites, and as part of weather forecasts and public advisories.

(b) Support compliance with ambient air quality standards and emissions strategy development. Data from FRM, FEM, and ARM monitors for NAAQS pollutants will be used for comparing an area's air pollution levels against the NAAQS. Data from monitors of various types can be used in the development of attainment and maintenance plans. SLAMS, and especially NCore station data, will be used to evaluate the regional air quality models used in developing emission strategies, and to track trends in air pollution abatement control measures' impact on improving air quality. In monitoring locations near major air pollution sources, source-oriented monitoring data can provide insight into how well industrial sources are controlling their pollutant emissions.

(c) Support for air pollution research studies. Air pollution data from the NCore network can be used to supplement data collected by researchers working on health effects assessments and atmospheric processes, or for monitoring methods development work.

1.1.1 In order to support the air quality management work indicated in the three basic air monitoring objectives, a network must be designed with a variety of types of monitoring sites. Monitoring sites must be capable of informing managers about many things including the peak air pollution levels, typical levels in populated areas, air pollution transported into and outside of a city or region, and air pollution levels near specific sources. To summarize some of these sites, here is a listing of six general site types:

(a) Sites located to determine the highest concentrations expected to occur in the area covered by the network.

(b) Sites located to measure typical concentrations in areas of high population density.

(c) Sites located to determine the impact of significant sources or source categories on air quality.

(d) Sites located to determine general background concentration levels.

(e) Sites located to determine the extent of regional pollutant transport among populated areas; and in support of secondary standards.

(f) Sites located to measure air pollution impacts on visibility, vegetation damage, or other welfare-based impacts.

1.1.2 This appendix contains criteria for the basic air monitoring requirements. The total number of monitoring sites that will serve the variety of data needs will be substantially higher than these minimum requirements provide. The optimum size of a particular network involves trade-offs among data needs and available resources. This regulation intends to provide for national air monitoring needs, and to lend support for the flexibility necessary to meet data collection needs of area air quality managers. The EPA, State, and local agencies will periodically collaborate on network design issues through the network assessment process outlined in § 58.10.

1.1.3 This appendix focuses on the relationship between monitoring objectives, site types, and the geographic location of monitoring sites. Included are a rationale and set of general criteria for identifying candidate site locations in terms of physical characteristics which most closely match a specific monitoring objective. The criteria for more specifically locating the monitoring site, including spacing from roadways and vertical and horizontal probe and path placement, are described in appendix E to this part.

1.2 Spatial Scales. (a) To clarify the nature of the link between general monitoring objectives, site types, and the physical location of a particular monitor, the concept of spatial scale of representativeness is defined. The goal in locating monitors is to correctly match the spatial scale represented by the sample of monitored air with the spatial scale most appropriate for the monitoring site type, air pollutant to be measured, and the monitoring objective.

(b) Thus, spatial scale of representativeness is described in terms of the physical dimensions of the air parcel nearest to a monitoring site throughout which actual pollutant concentrations are reasonably similar. The scales of representativeness of most interest for the monitoring site types described above are as follows:

(1) *Microscale*—Defines the concentrations in air volumes associated with area dimensions ranging from several meters up to about 100 meters.

(2) *Middle scale*—Defines the concentration typical of areas up to several city blocks in size with dimensions ranging from about 100 meters to 0.5 kilometer.

(3) *Neighborhood scale*—Defines concentrations within some extended area of the city that has relatively uniform land use with dimensions in the 0.5 to 4.0 kilometers range. The neighborhood and urban scales listed below have the potential to overlap in applications that concern secondarily formed or homogeneously distributed air pollutants.

(4) *Urban scale*—Defines concentrations within an area of city-like dimensions, on the order of 4 to 50 kilometers. Within a city, the geographic placement of sources may result in there being no single site that can be said to represent air quality on an urban scale.

(5) *Regional scale*—Defines usually a rural area of reasonably homogeneous geography without large sources, and extends from tens to hundreds of kilometers.

(6) *National and global scales*—These measurement scales represent concentrations characterizing the nation and the globe as a whole.

(c) Proper siting of a monitor requires specification of the monitoring objective, the types of sites necessary to meet the objective, and then the desired spatial scale of representativeness. For example, consider the case where the objective is to determine NAAQS compliance by understanding the maximum ozone concentrations for an area. Such areas would most likely be located downwind of a metropolitan area, quite likely in a suburban residential area where children and other susceptible individuals are likely to be outdoors. Sites located in these areas are most likely to represent an urban scale of measurement. In this example, physical location was determined by considering ozone precursor emission patterns, public activity, and meteorological characteristics affecting ozone formation and dispersion. Thus, spatial scale of representativeness was not used in the selection process but was a result of site location.

(d) In some cases, the physical location of a site is determined from joint consideration of both the basic monitoring objective and the type of monitoring site desired, or required by this appendix. For example, to determine $PM_{2.5}$ concentrations which are typical over a geographic area having relatively high $PM_{2.5}$ concentrations, a neighborhood scale site is more appropriate. Such a site would likely be located in a residential or commercial area having a high overall $PM_{2.5}$ emission density but not in the immediate vicinity of any single dominant source. Note that in this example, the desired scale of representativeness was an important factor in determining the physical location of the monitoring site.

(e) In either case, classification of the monitor by its type and spatial scale of representativeness is necessary and will aid in interpretation of the monitoring data for a particular monitoring objective (e.g., public reporting, NAAQS compliance, or research support).

(f) Table D–1 of this appendix illustrates the relationship between the various site types that can be used to support the three basic monitoring objectives, and the scales of representativeness that are generally most appropriate for that type of site.

TABLE D–1 OF APPENDIX D TO PART 58. RELATIONSHIP BETWEEN SITE TYPES AND SCALES OF REPRESENTATIVENESS

Site type	Appropriate siting scales
1. Highest concentration.	Micro, middle, neighborhood (*sometimes* urban or regional for secondarily formed pollutants).
2. Population oriented.	Neighborhood, urban.
3. Source impact	Micro, middle, neighborhood.
4. General/background & regional transport.	Urban, regional.
5. Welfare-related impacts.	Urban, regional.

2. General Monitoring Requirements

(a) The National ambient air monitoring system includes several types of monitoring stations, each targeting a key data collection need and each varying in technical sophistication.

(b) Research grade sites are platforms for scientific studies, either involved with health or welfare impacts, measurement methods development, or other atmospheric studies. These sites may be collaborative efforts between regulatory agencies and researchers with specific scientific objectives for each. Data from these sites might be collected with both traditional and experimental techniques, and data collection might involve specific laboratory analyses not common in routine measurement programs. The research grade sites are not required by regulation; however, they are included here due to their important role in supporting the air quality management program.

(c) The NCore multipollutant sites are sites that measure multiple pollutants in order to provide support to integrated air quality management data needs. NCore sites include both neighborhood and urban scale measurements in general, in a selection of metropolitan areas and a limited number of more rural locations. Continuous monitoring methods are to be used at the NCore sites when available for a pollutant to be measured, as it is important to have data collected over common time periods for integrated analyses. NCore multipollutant sites are intended to be long-term sites useful for a variety of applications including air quality trends analyses, model evaluation, and tracking metropolitan area statistics. As such, the NCore sites should be placed away from direct emission sources that could substantially impact the ability to detect area-wide concentrations. The Administrator must approve the NCore sites.

(d) Monitoring sites designated as SLAMS sites, but not as NCore sites, are intended to address specific air quality management interests, and as such, are frequently single-pollutant measurement sites. The EPA Regional Administrator must approve the SLAMS sites.

(e) This appendix uses the statistical-based definitions for metropolitan areas provided by the Office of Management and Budget and the Census Bureau. These areas are referred to as metropolitan statistical areas (MSA), micropolitan statistical areas, core-based statistical areas (CBSA), and combined statistical areas (CSA). A CBSA associated with at least one urbanized area of 50,000 population or greater is termed a Metropolitan Statistical Area (MSA). A CBSA associated with at least one urbanized cluster of at least 10,000 population or greater is termed a Micropolitan Statistical Area. CSA consist of two or more adjacent CBSA. In this appendix, the term MSA is used to refer to a Metropolitan Statistical Area. By definition, both MSA and CSA have a high degree of integration; however, many such areas cross State or other political boundaries. MSA and CSA may also cross more than one air shed. The EPA recognizes that State or local agencies must consider MSA/CSA boundaries and their own political boundaries and geographical characteristics in designing their air monitoring networks. The EPA recognizes that there may be situations where the EPA Regional Administrator and the affected State or local agencies may need to augment or to divide the overall MSA/CSA monitoring responsibilities and requirements among these various agencies to achieve an effective network design. Full monitoring requirements apply separately to each affected State or local agency in the absence of an agreement between the affected agencies and the EPA Regional Administrator.

3. Design Criteria for NCore Sites

(a) Each State (i.e. the fifty States, District of Columbia, Puerto Rico, and the Virgin Islands) is required to operate at least one NCore site. States may delegate this requirement to a local agency. States with many MSAs often also have multiple air sheds with unique characteristics and, often, elevated air pollution. These States include, at a minimum, California, Florida, Illinois, Michigan, New York, North Carolina, Ohio, Pennsylvania, and Texas. These States are required to identify one to two additional NCore sites in order to account for their unique situations. These additional sites shall be located to avoid proximity to large emission sources. Any State or local agency can propose additional candidate NCore sites or modifications to these requirements for approval by the Administrator. The NCore locations should be leveraged with other multipollutant air monitoring sites including PAMS sites, National Air Toxics Trends Stations (NATTS) sites, CASTNET sites, and STN sites. Site leveraging includes using the same monitoring platform and equipment to meet the objectives of the variety of programs where possible and advantageous.

(b) The NCore sites must measure, at a minimum, $PM_{2.5}$ particle mass using continuous and integrated/filter-based samplers, speciated $PM_{2.5}$, $PM_{10-2.5}$ particle mass, speciated $PM_{10-2.5}$, O_3, SO_2, CO, NO/NO_y, wind speed, wind direction, relative humidity, and ambient temperature.

(1) Although the measurement of NO_y is required in support of a number of monitoring objectives, available commercial instruments may indicate little difference in their measurement of NO_y compared to the conventional measurement of NO_X, particularly in areas with relatively fresh sources of nitrogen emissions. Therefore, in areas with negligible expected difference between NO_y and NO_X measured concentrations, the Administrator may allow

for waivers that permit NO_X monitoring to be substituted for the required NO_y monitoring at applicable NCore sites.

(2) EPA recognizes that, in some cases, the physical location of the NCore site may not be suitable for representative meteorological measurements due to the site's physical surroundings. It is also possible that nearby meteorological measurements may be able to fulfill this data need. In these cases, the requirement for meteorological monitoring can be waived by the Administrator.

(c) In addition to the continuous measurements listed above, 10 of the NCore locations must also measure lead (Pb) either at the same sites or elsewhere within the MSA/CSA boundary. These ten Pb sites are included within the NCore networks because they are intended to be long-term in operation, and not impacted directly from a single Pb source. These locations for Pb monitoring must be located in the most populated MSA/CSA in each of the 10 EPA Regions. Alternatively, it is also acceptable to use the Pb concentration data provided at urban air toxics sites. In approving any substitutions, the Administrator must consider whether these alternative sites are suitable for collecting long-term lead trends data for the broader area.

(d) Siting criteria are provided for urban and rural locations. Sites with significant historical records that do not meet siting criteria may be approved as NCore by the Administrator. Sites with the suite of NCore measurements that are explicitly designed for other monitoring objectives are exempt from these siting criteria (e.g., a near-roadway site).

(1) Urban NCore stations are to be generally located at urban or neighborhood scale to provide representative concentrations of exposure expected throughout the metropolitan area; however, a middle-scale site may be acceptable in cases where the site can represent many such locations throughout a metropolitan area.

(2) Rural NCore stations are to be located to the maximum extent practicable at a regional or larger scale away from any large local emission source, so that they represent ambient concentrations over an extensive area.

4. Pollutant-Specific Design Criteria for SLAMS Sites

4.1 Ozone (O_3) Design Criteria. (a) State, and where appropriate, local agencies must operate O_3 sites for various locations depending upon area size (in terms of population and geographic characteristics) and typical peak concentrations (expressed in percentages below, or near the O_3 NAAQS). Specific SLAMS O_3 site minimum requirements are included in Table D–2 of this appendix. The NCore sites are expected to complement the O_3 data collection that takes place at single-pollutant SLAMS sites, and both types of sites can be used to meet the network minimum requirements. The total number of O_3 sites needed to support the basic monitoring objectives of public data reporting, air quality mapping, compliance, and understanding O_3-related atmospheric processes will include more sites than these minimum numbers required in Table D–2 of this appendix. The EPA Regional Administrator and the responsible State or local air monitoring agency must work together to design and/or maintain the most appropriate O_3 network to service the variety of data needs in an area.

TABLE D–2 OF APPENDIX D TO PART 58.— SLAMS MINIMUM O_3 MONITORING REQUIREMENTS

MSA population[1, 2]	Most recent 3-year design value concentrations ≥85% of any O_3 NAAQS[3]	Most recent 3-year design value concentrations <85% of any O_3 NAAQS[3, 4]
>10 million	4	2
4–10 million	3	1
350,000–<4 million	2	1
50,000–<350,000[5]	1	0

[1] Minimum monitoring requirements apply to the Metropolitan statistical area (MSA).
[2] Population based on latest available census figures.
[3] The ozone (O_3) National Ambient Air Quality Standards (NAAQS) levels and forms are defined in 40 CFR part 50.
[4] These minimum monitoring requirements apply in the absence of a design value.
[5] Metropolitan statistical areas (MSA) must contain an urbanized area of 50,000 or more population.

(b) Within an O_3 network, at least one O_3 site for each MSA, or CSA if multiple MSAs are involved, must be designed to record the maximum concentration for that particular metropolitan area. More than one maximum concentration site may be necessary in some areas. Table D–2 of this appendix does not account for the full breadth of additional factors that would be considered in designing a complete O_3 monitoring program for an area. Some of these additional factors include geographic size, population density, complexity of terrain and meteorology, adjacent O_3 monitoring programs, air pollution transport from neighboring areas, and measured air quality in comparison to all forms of the O_3 NAAQS (i.e., 8-hour and 1-hour forms). Networks must be designed to account for all of these area characteristics. Network designs must be re-examined in periodic network assessments. Deviations from the above O_3 requirements are allowed if approved by the EPA Regional Administrator.

(c) The appropriate spatial scales for O_3 sites are neighborhood, urban, and regional. Since O_3 requires appreciable formation time, the mixing of reactants and products occurs over large volumes of air, and this reduces the importance of monitoring small scale spatial variability.

(1) *Neighborhood scale*—Measurements in this category represent conditions throughout some reasonably homogeneous urban sub-region, with dimensions of a few kilometers. Homogeneity refers to pollutant concentrations. Neighborhood scale data will provide valuable information for developing, testing, and revising concepts and models that describe urban/regional concentration patterns. These data will be useful to the understanding and definition of processes that take periods of hours to occur and hence involve considerable mixing and transport. Under stagnation conditions, a site located in the neighborhood scale may also experience peak concentration levels within a metropolitan area.

(2) *Urban scale*—Measurement in this scale will be used to estimate concentrations over large portions of an urban area with dimensions of several kilometers to 50 or more kilometers. Such measurements will be used for determining trends, and designing area-wide control strategies. The urban scale sites would also be used to measure high concentrations downwind of the area having the highest precursor emissions.

(3) *Regional scale*—This scale of measurement will be used to typify concentrations over large portions of a metropolitan area and even larger areas with dimensions of as much as hundreds of kilometers. Such measurements will be useful for assessing the O_3 that is transported to and from a metropolitan area, as well as background concentrations. In some situations, particularly when considering very large metropolitan areas with complex source mixtures, regional scale sites can be the maximum concentration location.

(d) EPA's technical guidance documents on O_3 monitoring network design should be used to evaluate the adequacy of each existing O_3 monitor, to relocate an existing site, or to locate any new O_3 sites.

(e) For locating a neighborhood scale site to measure typical city concentrations, a reasonably homogeneous geographical area near the center of the region should be selected which is also removed from the influence of major NO_X sources. For an urban scale site to measure the high concentration areas, the emission inventories should be

used to define the extent of the area of important nonmethane hydrocarbons and NO_X emissions. The meteorological conditions that occur during periods of maximum photochemical activity should be determined. These periods can be identified by examining the meteorological conditions that occur on the highest O_3 air quality days. Trajectory analyses, an evaluation of wind and emission patterns on high O_3 days, can also be useful in evaluating an O_3 monitoring network. In areas without any previous O_3 air quality measurements, meteorological and O_3 precursor emissions information would be useful.

(f) Once the meteorological and air quality data are reviewed, the prospective maximum concentration monitor site should be selected in a direction from the city that is most likely to observe the highest O_3 concentrations, more specifically, downwind during periods of photochemical activity. In many cases, these maximum concentration O_3 sites will be located 10 to 30 miles or more downwind from the urban area where maximum O_3 precursor emissions originate. The downwind direction and appropriate distance should be determined from historical meteorological data collected on days which show the potential for producing high O_3 levels. Monitoring agencies are to consult with their EPA Regional Office when considering siting a maximum O_3 concentration site.

(g) In locating a neighborhood scale site which is to measure high concentrations, the same procedures used for the urban scale are followed except that the site should be located closer to the areas bordering on the center city or slightly further downwind in an area of high density population.

(h) For regional scale background monitoring sites, similar meteorological analysis as for the maximum concentration sites may also inform the decisions for locating regional scale sites. Regional scale sites may be located to provide data on O_3 transport between cities, as background sites, or for other data collection purposes. Consideration of both area characteristics, such as meteorology, and the data collection objectives, such as transport, must be jointly considered for a regional scale site to be useful.

(i) Since O_3 levels decrease significantly in the colder parts of the year in many areas, O_3 is required to be monitored at SLAMS monitoring sites only during the ''ozone season'' as designated in the AQS files on a State-by-State basis and described below in Table D–3 of this appendix. Deviations from the O_3 monitoring season must be approved by the EPA Regional Administrator, documented within the annual monitoring network plan, and updated in AQS. Information on how to analyze O_3 data to support a change to the O_3 season in support of the 8-hour standard for a specific State can be found in reference 8 to this appendix.

TABLE D–3 TO APPENDIX D OF PART 58. OZONE MONITORING SEASON BY STATE

State	Begin month	End month
Alabama	March	October
Alaska	April	October
Arizona	January	December
Arkansas	March	November
California	January	December
Colorado	March	September
Connecticut	April	September
Delaware	April	October
District of Columbia.	April	October
Florida	March	October
Georgia	March	October
Hawaii	January	December
Idaho	May	September
Illinois	April	October
Indiana	April	September
Iowa	April	October
Kansas	April	October
Kentucky	March	October
Louisiana AQCR 019,022.	March	October
Louisiana AQCR 106.	January	December
Maine	April	September
Maryland	April	October
Massachusetts	April	September
Michigan	April	September
Minnesota	April	October
Mississippi	March	October
Missouri	April	October
Montana	June	September
Nebraska	April	October
Nevada	January	December
New Hampshire	April	September
New Jersey	April	October
New Mexico	January	December
New York	April	October
North Carolina	April	October
North Dakota	May	September
Ohio	April	October
Oklahoma	March	November
Oregon	May	September
Pennsylvania	April	October
Puerto Rico	January	December
Rhode Island	April	September
South Carolina	April	October
South Dakota	June	September
Tennessee	March	October
Texas AQCR 106,153, 213, 214, 216.	January	December
Texas AQCR 022, 210, 211, 212, 215, 217, 218.	March	October
Utah	May	September
Vermont	April	September
Virginia	April	October
Washington	May	September
West Virginia	April	October
Wisconsin	April 15	October 15
Wyoming	April	October
American Samoa	January	December
Guam	January	December
Virgin Islands	January	December

4.2 Carbon Monoxide (CO) Design Criteria. (a) There are no minimum requirements for the number of CO monitoring sites. Continued operation of existing SLAMS CO sites using FRM or FEM is required until discontinuation is approved by the EPA Regional Administrator. Where SLAMS CO monitoring is ongoing, at least one site must be a maximum concentration site for that area under investigation.

(b) Microscale and middle scale measurements are useful site classifications for SLAMS sites since most people have the potential for exposure on these scales. Carbon monoxide maxima occur primarily in areas near major roadways and intersections with high traffic density and often poor atmospheric ventilation.

(1) *Microscale*—This scale applies when air quality measurements are to be used to represent distributions within street canyons, over sidewalks, and near major roadways. In the case with carbon monoxide, microscale measurements in one location can often be considered as representative of other similar locations in a city.

(2) *Middle scale*—Middle scale measurements are intended to represent areas with dimensions from 100 meters to 0.5 kilometer. In certain cases, middle scale measurements may apply to areas that have a total length of several kilometers, such as ''line'' emission source areas. This type of emission sources areas would include air quality along a commercially developed street or shopping plaza, freeway corridors, parking lots and feeder streets.

(c) After the spatial scale and type of site has been determined to meet the monitoring objective for each location, the technical guidance in reference 2 of this appendix should be used to evaluate the adequacy of each existing CO site and must be used to relocate an existing site or to locate any new sites.

4.3 Nitrogen Dioxide (NO_2) Design Criteria. (a) There are no minimum requirements for the number of NO_2 monitoring sites. Continued operation of existing SLAMS NO_2 sites using FRM or FEM is required until discontinuation is approved by the EPA Regional Administrator. Where SLAMS NO_2 monitoring is ongoing, at least one NO_2 site in the area must be located to measure the maximum concentration of NO_2.

(b) NO/NO_y measurements are included within the NCore multipollutant site requirements and the PAMS program. These NO/NO_y measurements will produce conservative estimates for NO_2 that can be used to ensure tracking continued compliance with the NO_2 NAAQS. NO/NO_y monitors are used at these sites because it is important to collect data on total reactive nitrogen species for understanding O_3 photochemistry.

4.4 Sulfur Dioxide (SO_2) Design Criteria. (a) There are no minimum requirements for the number of SO_2 monitoring sites. Continued operation of existing SLAMS SO_2 sites using FRM or FEM is required until discontinuation is approved by the EPA Regional Administrator. Where SLAMS SO_2 monitoring is ongoing, at least one of the SLAMS SO_2 sites must be a maximum concentration site for that specific area.

(b) The appropriate spatial scales for SO_2 SLAMS monitoring are the microscale, middle, and possibly neighborhood scales. The multi-pollutant NCore sites can provide

for metropolitan area trends analyses and general control strategy progress tracking. Other SLAMS sites are expected to provide data that are useful in specific compliance actions, for maintenance plan agreements, or for measuring near specific stationary sources of SO_2.

(1) *Micro and middle scale*—Some data uses associated with microscale and middle scale measurements for SO_2 include assessing the effects of control strategies to reduce concentrations (especially for the 3-hour and 24-hour averaging times) and monitoring air pollution episodes.

(2) *Neighborhood scale*—This scale applies where there is a need to collect air quality data as part of an ongoing SO_2 stationary source impact investigation. Typical locations might include suburban areas adjacent to SO_2 stationary sources for example, or for determining background concentrations as part of these studies of population responses to exposure to SO_2.

(c) Technical guidance in reference 1 of this appendix should be used to evaluate the adequacy of each existing SO_2 site, to relocate an existing site, or to locate new sites.

4.5 Lead (Pb) Design Criteria. (a) State, and where appropriate, local agencies are required to conduct Pb monitoring for all areas where Pb levels have been shown or are expected to be of concern over the most recent 2 years. As a minimum, there must be two SLAMS sites in any area where Pb concentrations currently exceed or have exceeded the Pb NAAQS in the most recent 2 years, and at least one of these two required sites must be a maximum concentration site. Where the Pb air quality violations are widespread or the emissions density, topography, or population locations are complex and varied, the EPA Regional Administrator may require more than two Pb ambient air monitoring sites.

(b) The most important spatial scales to effectively characterize the emissions from point sources are the micro, middle, and neighborhood scales.

(1) *Microscale*—This scale would typify areas in close proximity to lead point sources. Emissions from point sources such as primary and secondary lead smelters, and primary copper smelters may under fumigation conditions likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale sites provide information for evaluating and developing ''hot-spot'' control measures.

(2) *Middle scale*—This scale generally represents Pb air quality levels in areas up to several city blocks in size with dimensions on the order of approximately 100 meters to 500 meters. The middle scale may for example, include schools and playgrounds in center city areas which are close to major Pb point sources. Pb monitors in such areas are desirable because of the higher sensitivity of children to exposures of elevated Pb concentrations (reference 3 of this appendix). Emissions from point sources frequently impact on areas at which single sites may be located to measure concentrations representing middle spatial scales.

(3) *Neighborhood scale*—The neighborhood scale would characterize air quality conditions throughout some relatively uniform land use areas with dimensions in the 0.5 to 4.0 kilometer range. Sites of this scale would provide monitoring data in areas representing conditions where children live and play. Monitoring in such areas is important since this segment of the population is more susceptible to the effects of Pb. Where a neighborhood site is located away from immediate Pb sources, the site may be very useful in representing typical air quality values for a larger residential area, and therefore suitable for population exposure and trends analyses.

(c) Technical guidance is found in references 4 and 5 of this appendix. These documents provide additional guidance on locating sites to meet specific urban area monitoring objectives and should be used in locating new sites or evaluating the adequacy of existing sites.

4.6 Particulate Matter (PM_{10}) Design Criteria. (a) State, and where applicable local, agencies must operate the minimum number of required PM_{10} SLAMS sites listed in Table D–4 of this appendix.

TABLE D–4 OF APPENDIX D TO PART 58. PM_{10} MINIMUM MONITORING REQUIREMENTS (NUMBER OF STATIONS PER MSA) [1]

Population category	High concentration [2]	Medium concentration [3]	Low concentration [4,5]
>1,000,000	6–10	4–8	2–4
500,000–1,000,000	4–8	2–4	1–2
250,000–500,000	3–4	1–2	0–1
100,000–250,000	1–2	0–1	0

[1] Selection of urban areas and actual numbers of stations per area within the ranges shown in this table will be jointly determined by EPA and the State Agency.

[2] High concentration areas are those for which ambient PM10 data show ambient concentrations exceeding the PM_{10} NAAQS by 20 percent or more.

[3] Medium concentration areas are those for which ambient PM10 data show ambient concentrations exceeding 80 percent of the PM_{10} NAAQS.

[4] Low concentration areas are those for which ambient PM10 data show ambient concentrations less than 80 percent of the PM_{10} NAAQS.

[5] These minimum monitoring requirements apply in the absence of a design value.

(b) Although microscale monitoring may be appropriate in some circumstances, the most important spatial scales to effectively characterize the emissions of PM_{10} from both mobile and stationary sources are the middle scales and neighborhood scales.

(1) *Microscale*—This scale would typify areas such as downtown street canyons, traffic corridors, and fence line stationary source monitoring locations where the general public could be exposed to maximum PM_{10} concentrations. Microscale particulate matter sites should be located near inhabited buildings or locations where the general public can be expected to be exposed to the concentration measured. Emissions from stationary sources such as primary and secondary smelters, power plants, and other large industrial processes may, under certain plume conditions, likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale sites provide information for evaluating and developing hot spot control measures.

(2) *Middle scale*—Much of the short-term public exposure to coarse fraction particles (PM_{10}) is on this scale and on the neighborhood scale. People moving through downtown areas or living near major roadways or stationary sources, may encounter particulate pollution that would be adequately characterized by measurements of this spatial scale. Middle scale PM_{10} measurements can be appropriate for the evaluation of possible short-term exposure public health effects. In many situations, monitoring sites that are representative of micro-scale or middle-scale impacts are not unique and are representative of many similar situations. This can occur along traffic corridors or other locations in a residential district. In this case, one location is representative of a neighborhood of small scale sites and is appropriate for evaluation of long-term or chronic effects. This scale also includes the characteristic concentrations for other areas with dimensions of a few hundred meters such as the parking lot and feeder streets associated with shopping centers, stadia, and office buildings. In the case of PM_{10}, unpaved or seldomly swept parking lots associated with these sources could be an important source

in addition to the vehicular emissions themselves.

(3) *Neighborhood scale*—Measurements in this category represent conditions throughout some reasonably homogeneous urban sub-region with dimensions of a few kilometers and of generally more regular shape than the middle scale. Homogeneity refers to the particulate matter concentrations, as well as the land use and land surface characteristics. In some cases, a location carefully chosen to provide neighborhood scale data would represent not only the immediate neighborhood but also neighborhoods of the same type in other parts of the city. Neighborhood scale PM_{10} sites provide information about trends and compliance with standards because they often represent conditions in areas where people commonly live and work for extended periods. Neighborhood scale data could provide valuable information for developing, testing, and revising models that describe the larger-scale concentration patterns, especially those models relying on spatially smoothed emission fields for inputs. The neighborhood scale measurements could also be used for neighborhood comparisons within or between cities.

4.7 Fine Particulate Matter ($PM_{2.5}$) Design Criteria.

4.7.1 General Requirements. (a) State, and where applicable local, agencies must operate the minimum number of required $PM_{2.5}$ SLAMS sites listed in Table D–5 of this appendix. The NCore sites are expected to complement the $PM_{2.5}$ data collection that takes place at non-NCore SLAMS sites, and both types of sites can be used to meet the minimum $PM_{2.5}$ network requirements. Deviations from these $PM_{2.5}$ monitoring requirements must be approved by the EPA Regional Administrator.

TABLE D–5 OF APPENDIX D TO PART 58. $PM_{2.5}$ MINIMUM MONITORING REQUIREMENTS

MSA population [1,2]	Most recent 3-year design value ≥85% of any $PM_{2.5}$ NAAQS [3]	Most recent 3-year design value <85% of any $PM_{2.5}$ NAAQS [3, 4]
>1,000,000	3	2
500,000–1,000,000	2	1
50,000–<500,000 [5]	1	0

[1] Minimum monitoring requirements apply to the Metropolitan statistical area (MSA).
[2] Population based on latest available census figures.
[3] The $PM_{2.5}$ National Ambient Air Quality Standards (NAAQS) levels and forms are defined in 40 CFR part 50.
[4] These minimum monitoring requirements apply in the absence of a design value.
[5] Metropolitan statistical areas (MSA) must contain an urbanized area of 50,000 or more population.

(b) Specific Design Criteria for $PM_{2.5}$. The required monitoring stations or sites must be sited to represent community-wide air quality. These sites can include sites collocated at PAMS. These monitoring stations will typically be at neighborhood or urban-scale; however, in certain instances where population-oriented micro-or middle-scale $PM_{2.5}$ monitoring are determined by the Regional Administrator to represent many such locations throughout a metropolitan area, these smaller scales can be considered to represent community-wide air quality.

(1) At least one monitoring station is to be sited in a population-oriented area of expected maximum concentration.

(2) For areas with more than one required SLAMS, a monitoring station is to be sited in an area of poor air quality.

(3) Additional technical guidance for siting $PM_{2.5}$ monitors is provided in references 6 and 7 of this appendix.

(c) The most important spatial scale to effectively characterize the emissions of particulate matter from both mobile and stationary sources is the neighborhood scale for $PM_{2.5}$. For purposes of establishing monitoring sites to represent large homogenous areas other than the above scales of representativeness and to characterize regional transport, urban or regional scale sites would also be needed. Most $PM_{2.5}$ monitoring in urban areas should be representative of a neighborhood scale.

(1) *Microscale*—This scale would typify areas such as downtown street canyons and traffic corridors where the general public would be exposed to maximum concentrations from mobile sources. In some circumstances, the microscale is appropriate for particulate sites; community-oriented SLAMS sites measured at the microscale level should, however, be limited to urban sites that are representative of long-term human exposure and of many such microenvironments in the area. In general, microscale particulate matter sites should be located near inhabited buildings or locations where the general public can be expected to be exposed to the concentration measured. Emissions from stationary sources such as primary and secondary smelters, power plants, and other large industrial processes may, under certain plume conditions, likewise result in high ground level concentrations at the microscale. In the latter case, the microscale would represent an area impacted by the plume with dimensions extending up to approximately 100 meters. Data collected at microscale sites provide information for evaluating and developing hot spot control measures. Unless these sites are indicative of population-oriented monitoring, they may be more appropriately classified as SPM.

(2) *Middle scale*—People moving through downtown areas, or living near major roadways, encounter particle concentrations that would be adequately characterized by this spatial scale. Thus, measurements of this type would be appropriate for the evaluation of possible short-term exposure public health effects of particulate matter pollution. In many situations, monitoring sites that are representative of microscale or middle-scale impacts are not unique and are representative of many similar situations. This can occur along traffic corridors or other locations in a residential district. In this case, one location is representative of a number of small scale sites and is appropriate for evaluation of long-term or chronic effects. This scale also includes the characteristic concentrations for other areas with dimensions of a few hundred meters such as the parking lot and feeder streets associated with shopping centers, stadia, and office buildings.

(3) *Neighborhood scale*—Measurements in this category would represent conditions throughout some reasonably homogeneous urban sub-region with dimensions of a few kilometers and of generally more regular shape than the middle scale. Homogeneity refers to the particulate matter concentrations, as well as the land use and land surface characteristics. Much of the $PM_{2.5}$ exposures are expected to be associated with this scale of measurement. In some cases, a location carefully chosen to provide neighborhood scale data would represent the immediate neighborhood as well as neighborhoods of the same type in other parts of the city. $PM_{2.5}$ sites of this kind provide good information about trends and compliance with standards because they often represent conditions in areas where people commonly live and work for periods comparable to those specified in the NAAQS. In general, most $PM_{2.5}$ monitoring in urban areas should have this scale.

(4) *Urban scale*—This class of measurement would be used to characterize the particulate matter concentration over an entire metropolitan or rural area ranging in size from 4 to 50 kilometers. Such measurements would be useful for assessing trends in area-wide air quality, and hence, the effectiveness of large scale air pollution control strategies. Community-oriented $PM_{2.5}$ sites may have this scale.

(5) *Regional scale*—These measurements would characterize conditions over areas with dimensions of as much as hundreds of kilometers. As noted earlier, using representative conditions for an area implies some degree of homogeneity in that area. For this reason, regional scale measurements would be most applicable to sparsely populated areas. Data characteristics of this scale would provide information about larger scale processes of particulate matter

emissions, losses and transport. $PM_{2.5}$ transport contributes to elevated particulate concentrations and may affect multiple urban and State entities with large populations such as in the eastern United States. Development of effective pollution control strategies requires an understanding at regional geographical scales of the emission sources and atmospheric processes that are responsible for elevated $PM_{2.5}$ levels and may also be associated with elevated O_3 and regional haze.

4.7.2 Requirement for Continuous $PM_{2.5}$ Monitoring. State, or where appropriate, local agencies must operate continuous fine particulate analyzers equal to at least one-half (round up) the minimum required sites listed in Table D–5 of this appendix. At least one required FRM/FEM monitor in each MSA must be collocated. State and local air monitoring agencies must use methodologies and quality assurance/quality control(QA/QC) procedures approved by the EPA Regional Administrator for these sites.

4.7.3 Requirement for $PM_{2.5}$ Background and Transport Sites. Each State shall install and operate at least one $PM_{2.5}$ site to monitor for regional background and at least one $PM_{2.5}$ site to monitor regional transport. These monitoring sites may be at community-oriented sites and this requirement may be satisfied by a corresponding monitor in an area having similar air quality in another State. State and local air monitoring agencies must use methodologies and QA/QC procedures approved by the EPA Regional Administrator for these sites. Methods used at these sites may include non-federal reference method samplers such as IMPROVE or continuous $PM_{2.5}$ monitors.

4.7.4 $PM_{2.5}$ Chemical Speciation Site Requirements. Each State shall continue to conduct chemical speciation monitoring and analyses at sites designated to be part of the $PM_{2.5}$ Speciation Trends Network (STN). The selection and modification of these STN sites must be approved by the Administrator. The $PM_{2.5}$ chemical speciation urban trends sites shall include analysis for elements, selected anions and cations, and carbon. Samples must be collected using the monitoring methods and the sampling schedules approved by the Administrator. Chemical speciation is encouraged at additional sites where the chemically resolved data would be useful in developing State implementation plans and supporting atmospheric or health effects related studies.

4.7.5 Special Network Considerations Required When Using $PM_{2.5}$ Spatial Averaging Approaches. (a) The $PM_{2.5}$ NAAQS, specified in 40 CFR part 50, provides State and local air monitoring agencies with an option for spatially averaging $PM_{2.5}$ air quality data. More specifically, two or more community-oriented (i.e., sites in populated areas) $PM_{2.5}$ monitors may be averaged for comparison with the annual $PM_{2.5}$ NAAQS. This averaging approach is directly related to epidemiological studies used as the basis for the $PM_{2.5}$ annual NAAQS. Spatial averaging does not apply to comparisons with the daily $PM_{2.5}$ NAAQS.

(b) State and local agencies must carefully consider their approach for $PM_{2.5}$ network design when they intend to spatially average the data for compliance purposes. These State and local air monitoring agencies must define the area over which they intend to average $PM_{2.5}$ air quality concentrations. This area is defined as a Community Monitoring Zone (CMZ), which characterizes an area of relatively similar annual average air quality. State and local agencies can define a CMZ in a number of ways, including as part or all of a metropolitan area. These CMZ must be defined within a State or local agencies network description, as required in § 58.10 of this part and approved by the EPA Regional Administrator. When more than one CMZ is described within an agency's network design plan, CMZs must not overlap in their geographical coverage. The criteria that must be used for evaluating the acceptability of spatial averaging are defined in appendix N to 40 CFR part 50.

4.8 Coarse Particulate Matter ($PM_{10-2.5}$) Design Criteria.

4.8.1 General Monitoring Requirements. (a) The only required monitors for $PM_{10-2.5}$ are those required at NCore Stations.

(b) Although microscale monitoring may be appropriate in some circumstances, middle and neighborhood scale measurements are the most important station classifications for $PM_{10-2.5}$ to assess the variation in coarse particle concentrations that would be expected across populated areas that are in proximity to large emissions sources.

(1) *Microscale*—This scale would typify relatively small areas immediately adjacent to: Industrial sources; locations experiencing ongoing construction, redevelopment, and soil disturbance; and heavily traveled roadways. Data collected at microscale stations would characterize exposure over areas of limited spatial extent and population exposure, and may provide information useful for evaluating and developing source-oriented control measures.

(2) *Middle scale*—People living or working near major roadways or industrial districts encounter particle concentrations that would be adequately characterized by this spatial scale. Thus, measurements of this type would be appropriate for the evaluation of public health effects of coarse particle exposure. Monitors located in populated areas that are nearly adjacent to large industrial point sources of coarse particles provide suitable locations for assessing maximum population exposure levels and identifying areas of potentially poor air quality. Similarly, monitors located in populated areas that border dense networks of heavily-traveled traffic are appropriate for assessing the impacts of resuspended road dust. This scale also includes the characteristic concentrations for other areas with dimensions of a few hundred meters such as school grounds and parks that are nearly adjacent to major roadways and industrial point sources, locations exhibiting mixed residential and commercial development, and downtown areas featuring office buildings, shopping centers, and stadiums.

(3) *Neighborhood scale*—Measurements in this category would represent conditions throughout some reasonably homogeneous urban sub-region with dimensions of a few kilometers and of generally more regular shape than the middle scale. Homogeneity refers to the particulate matter concentrations, as well as the land use and land surface characteristics. This category includes suburban neighborhoods dominated by residences that are somewhat distant from major roadways and industrial districts but still impacted by urban sources, and areas of diverse land use where residences are interspersed with commercial and industrial neighborhoods. In some cases, a location carefully chosen to provide neighborhood scale data would represent the immediate neighborhood as well as neighborhoods of the same type in other parts of the city. The comparison of data from middle scale and neighborhood scale sites would provide valuable information for determining the variation of $PM_{10-2.5}$ levels across urban areas and assessing the spatial extent of elevated concentrations caused by major industrial point sources and heavily traveled roadways. Neighborhood scale sites would provide concentration data that are relevant to informing a large segment of the population of their exposure levels on a given day.

4.8.2 $PM_{10-2.5}$ Chemical Speciation Site Requirements. $PM_{10-2.5}$ chemical speciation monitoring and analyses is required at NCore sites. The selection and modification of these sites must be approved by the Administrator. Samples must be collected using the monitoring methods and the sampling schedules approved by the Administrator.

5. Network Design for Photochemical Assessment Monitoring Stations (PAMS)

The PAMS program provides more comprehensive data on O_3 air pollution in areas classified as serious, severe, or extreme nonattainment for O_3 than would otherwise be achieved through the NCore and SLAMS sites. More specifically, the PAMS program includes measurements for O_3, oxides of nitrogen, VOC, and meteorology.

5.1 PAMS Monitoring Objectives. PAMS design criteria are site specific. Concurrent measurements of O_3, oxides of nitrogen, speciated VOC, CO, and meteorology are obtained at PAMS sites. Design criteria for the PAMS network are based on locations relative to O_3 precursor source areas and predominant wind directions associated with high O_3 events. Specific monitoring objectives are associated with each location. The overall design should enable characterization of precursor emission sources within the area, transport of O_3 and its precursors, and the photochemical processes related to O_3 nonattainment. Specific objectives that must be addressed include assessing ambient trends in O_3, oxides of nitrogen, VOC species, and determining spatial and diurnal variability of O_3, oxides of nitrogen, and VOC species. Specific monitoring objectives associated with each of these sites may result in four distinct site types. Detailed guidance for the locating of these sites may be found in reference 9 of this appendix.

(a) Type 1 sites are established to characterize upwind background and transported O_3 and its precursor concentrations entering the area and will identify those areas which are subjected to transport.

(b) Type 2 sites are established to monitor the magnitude and type of precursor emissions in the area where maximum precursor emissions are expected to impact and are suited for the monitoring of urban air toxic pollutants.

(c) Type 3 sites are intended to monitor maximum O_3 concentrations occurring downwind from the area of maximum precursor emissions.

(d) Type 4 sites are established to characterize the downwind transported O_3 and its precursor concentrations exiting the area and will identify those areas which are potentially contributing to overwhelming transport in other areas.

5.2 Monitoring Period. PAMS precursor monitoring must be conducted annually throughout the months of June, July and August (as a minimum) when peak O_3 values are expected in each area. Alternate precursor monitoring periods may be submitted for approval to the Administrator as a part of the annual monitoring network plan required by § 58.10.

5.3 Minimum Monitoring Network Requirements. A Type 2 site is required for each area. Overall, only two sites are required for each area, providing all chemical measurements are made. For example, if a design includes two Type 2 sites, then a third site will be necessary to capture the NO_y measurement. The minimum required number and type of monitoring sites and sampling requirements are listed in Table D–6 of this appendix. Any alternative plans may be put in place in lieu of these requirements, if approved by the Administrator.

TABLE D–6 OF APPENDIX D TO PART 58. MINIMUM REQUIRED PAMS MONITORING LOCATIONS AND FREQUENCIES

Measurement	Where required	Sampling frequency (all daily except for upper air meteorology) [1]
Speciated VOC[2]	Two sites per area, one of which must be a Type 2 site	During the PAMS monitoring period: (1) Hourly auto GC, or (2) Eight 3-hour canisters, or (3) 1 morning and 1 afternoon canister with a 3-hour or less averaging time plus Continuous Total Non-methane Hydrocarbon measurement.
Carbonyl sampling.	Type 2 site in areas classified as serious or above for the 8-hour ozone standard.	3-hour samples every day during the PAMS monitoring period.
NO_X	All Type 2 sites	Hourly during the ozone monitoring season.[3]
NO_y	One site per area at the Type 3 or Type 1 site	Hourly during the ozone monitoring season.
CO (ppb level)	One site per area at a Type 2 site	Hourly during the ozone monitoring season.
Ozone	All sites	Hourly during the ozone monitoring season.
Surface met	All sites	Hourly during the ozone monitoring season.
Upper air meteorology.	One representative location within PAMS area	Sampling frequency must be approved as part of the annual monitoring network plan required in 40 CFR 58.10.

[1] Daily or with an approved alternative plan.
[2] Speciated VOC is defined in the "Technical Assistance Document for Sampling and Analysis of Ozone Precursors", EPA/600–R–98/161, September 1998.
[3] Approved ozone monitoring season as stipulated in Table D–3 of this appendix.

5.4 Transition Period. A transition period is allowed for phasing in the operation of newly required PAMS programs (due generally to reclassification of an area into serious, severe, or extreme nonattainment for ozone). Following the date of redesignation or reclassification of any existing O_3 nonattainment area to serious, severe, or extreme, or the designation of a new area and classification to serious, severe, or extreme O_3 nonattainment, a State is allowed 1 year to develop plans for its PAMS implementation strategy. Subsequently, a minimum of one Type 2 site must be operating by the first month of the following approved PAMS season. Operation of the remaining site(s) must, at a minimum, be phased in at the rate of one site per year during subsequent years as outlined in the approved PAMS network description provided by the State.

6. References

1. Ball, R.J. and G.E. Anderson. Optimum Site Exposure Criteria for SO_2 Monitoring. The Center for the Environment and Man, Inc., Hartford, CT. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Publication No. EPA–450/3–77–013. April 1977.

2. Ludwig, F.F., J.H.S. Kealoha, and E. Shelar. Selecting Sites for Carbon Monoxide Monitoring. Stanford Research Institute, Menlo Park, CA. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Publication No. EPA–450/3–75–077, September 1975.

3. Air Quality Criteria for Lead. Office of Research and Development, U.S. Environmental Protection Agency, Washington D.C. EPA Publication No. 600/8–89–049F. August 1990. (NTIS document numbers PB87–142378 and PB91–138420.)

4. Optimum Site Exposure Criteria for Lead Monitoring. PEDCo Environmental, Inc. Cincinnati, OH. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68–02–3013. May 1981.

5. Guidance for Conducting Ambient Air Monitoring for Lead Around Point Sources. Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–454/R–92–009. May 1997.

6. Koch, R.C. and H.E. Rector. Optimum Network Design and Site Exposure Criteria for Particulate Matter. GEOMET Technologies, Inc., Rockville, MD. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA Contract No. 68–02–3584. EPA 450/4–87–009. May 1987.

7. Watson *et al.* Guidance for Network Design and Optimum Site Exposure for $PM_{2.5}$ and PM_{10}. Prepared for U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–454/R–99–022, December 1997.

8. Guideline for Selecting and Modifying the Ozone Monitoring Season Based on an 8-Hour Ozone Standard. Prepared for U.S. Environmental Protection Agency, RTP, NC. EPA–454/R–98–001, June 1998.

9. Photochemical Assessment Monitoring Stations Implementation Manual. Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC. EPA–454/B–93–051. March 1994.

37. Appendix E to part 58 is revised to read as follows:

Appendix E to Part 58—Probe and Monitoring Path Siting Criteria for Ambient Air Quality Monitoring

1. Introduction.
2. Horizontal and Vertical Placement.
3. Spacing from Minor Sources.
4. Spacing From Obstructions.
5. Spacing From Trees.
6. Spacing From Roadways.
7. Cumulative Interferences on a Monitoring Path.
8. Maximum Monitoring Path Length.
9. Probe Material and Pollutant Sample Residence Time.
10. Waiver Provisions.
11. Summary.
12. References.

1. Introduction

(a) This appendix contains specific location criteria applicable to SLAMS, NCore, and PAMS ambient air quality monitoring probes, inlets, and optical paths after the general location has been selected based on the monitoring objectives and spatial scale of representation discussed in appendix D to this part. Adherence to these

siting criteria is necessary to ensure the uniform collection of compatible and comparable air quality data.

(b) The probe and monitoring path siting criteria discussed in this appendix must be followed to the maximum extent possible. It is recognized that there may be situations where some deviation from the siting criteria may be necessary. In any such case, the reasons must be thoroughly documented in a written request for a waiver that describes how and why the proposed siting deviates from the criteria. This documentation should help to avoid later questions about the validity of the resulting monitoring data. Conditions under which the EPA would consider an application for waiver from these siting criteria are discussed in section 10 of this appendix.

(c) The pollutant-specific probe and monitoring path siting criteria generally apply to all spatial scales except where noted otherwise. Specific siting criteria that are phrased with a ''must'' are defined as requirements and exceptions must be approved through the waiver provisions. However, siting criteria that are phrased with a ''should'' are defined as goals to meet for consistency but are not requirements.

2. Horizontal and Vertical Placement

The probe or at least 80 percent of the monitoring path must be located between 2 and 15 meters above ground level for all ozone, sulfur dioxide and nitrogen dioxide monitoring sites, and for neighborhood scale Pb, PM_{10}, $PM_{10-2.5}$, $PM_{2.5}$, and carbon monoxide sites. Middle scale $PM_{10-2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. Microscale Pb, PM_{10}, $PM_{10-2.5}$ and $PM_{2.5}$ sites are required to have sampler inlets between 2 and 7 meters above ground level. The inlet probes for microscale carbon monoxide monitors that are being used to measure concentrations near roadways must be 3±½ meters above ground level. The probe or at least 90 percent of the monitoring path must be at least 1 meter vertically or horizontally away from any supporting structure, walls, parapets, penthouses, etc., and away from dusty or dirty areas. If the probe or a significant portion of the monitoring path is located near the side of a building, then it should be located on the windward side of the building relative to the prevailing wind direction during the season of highest concentration potential for the pollutant being measured.

3. Spacing From Minor Sources

(a) It is important to understand the monitoring objective for a particular location in order to interpret this particular requirement. Local minor sources of a primary pollutant, such as SO_2, lead, or particles, can cause high concentrations of that particular pollutant at a monitoring site. If the objective for that monitoring site is to investigate these local primary pollutant emissions, then the site is likely to be properly located nearby. This type of monitoring site would in all likelihood be a microscale type of monitoring site. If a monitoring site is to be used to determine air quality over a much larger area, such as a neighborhood or city, a monitoring agency should avoid placing a monitor probe, path, or inlet near local, minor sources. The plume from the local minor sources should not be allowed to inappropriately impact the air quality data collected at a site. Particulate matter sites should not be located in an unpaved area unless there is vegetative ground cover year round, so that the impact of wind blown dusts will be kept to a minimum.

(b) Similarly, local sources of nitric oxide (NO) and ozone-reactive hydrocarbons can have a scavenging effect causing unrepresentatively low concentrations of O_3 in the vicinity of probes and monitoring paths for O_3. To minimize these potential interferences, the probe or at least 90 percent of the monitoring path must be away from furnace or incineration flues or other minor sources of SO_2 or NO. The separation distance should take into account the heights of the flues, type of waste or fuel burned, and the sulfur content of the fuel.

4. Spacing From Obstructions

(a) Buildings and other obstacles may possibly scavenge SO_2, O_3, or NO_2, and can act to restrict airflow for any pollutant. To avoid this interference, the probe, inlet, or at least 90 percent of the monitoring path must have unrestricted airflow and be located away from obstacles. The distance from the obstacle to the probe, inlet, or monitoring path must be at least twice the height that the obstacle protrudes above the probe, inlet, or monitoring path. An exception to this requirement can be made for measurements taken in street canyons or at source-oriented sites where buildings and other structures are unavoidable.

(b) Generally, a probe or monitoring path located near or along a vertical wall is undesirable because air moving along the wall may be subject to possible removal mechanisms. A probe, inlet, or monitoring path must have unrestricted airflow in an arc of at least 180 degrees. This arc must include the predominant wind direction for the season of greatest pollutant concentration potential. For particle sampling, a minimum of 2 meters of separation from walls, parapets, and structures is required for rooftop site placement.

(c) Special consideration must be given to the use of open path analyzers due to their inherent potential sensitivity to certain types of interferences, or optical obstructions. A monitoring path must be clear of all trees, brush, buildings, plumes, dust, or other optical obstructions, including potential obstructions that may move due to wind, human activity, growth of vegetation, etc. Temporary optical obstructions, such as rain, particles, fog, or snow, should be considered when siting an open path analyzer. Any of these temporary obstructions that are of sufficient density to obscure the light beam will affect the ability of the open path analyzer to continuously measure pollutant concentrations. Transient, but significant obscuration of especially longer measurement paths could occur as a result of certain meteorological conditions (*e.g.*, heavy fog, rain, snow) and/or aerosol levels that are of a sufficient density to prevent the open path analyzer's light transmission. If certain compensating measures are not otherwise implemented at the onset of monitoring (*e.g.*, shorter path lengths, higher light source intensity), data recovery during periods of greatest primary pollutant potential could be compromised. For instance, if heavy fog or high particulate levels are coincident with periods of projected NAAQS-threatening pollutant potential, the representativeness of the resulting data record in reflecting maximum pollutant concentrations may be substantially impaired despite the fact that the site may otherwise exhibit an acceptable, even exceedingly high overall valid data capture rate.

5. Spacing From Trees

(a) Trees can provide surfaces for SO_2, O_3, or NO_2 adsorption or reactions, and surfaces for particle deposition. Trees can also act as obstructions in cases where they are located between the air pollutant sources or source areas and the monitoring site, and where the trees are of a sufficient height and leaf canopy density to interfere with the normal airflow around the probe, inlet, or monitoring path. To reduce this possible interference/obstruction, the probe, inlet, or at least 90 percent of the monitoring path must be at least 10 meters or further from the drip line of trees.

(b) The scavenging effect of trees is greater for O_3 than for other criteria pollutants. Monitoring agencies must take steps to consider the impact of trees on ozone monitoring sites and take steps to avoid this problem.

(c) For microscale sites of any air pollutant, no trees or shrubs should be located between the probe and the source under investigation, such as a roadway or a stationary source.

6. Spacing From Roadways

6.1 Spacing for Ozone and Oxide of Nitrogen Probes and Monitoring Paths. In siting an O_3 analyzer, it is important to minimize destructive interferences from sources of NO, since NO readily reacts with O_3. In siting NO_2 analyzers for neighborhood and urban scale monitoring, it is important to minimize interferences from automotive sources. Table E–1 of this appendix provides the required minimum separation distances between a roadway and a probe or, where applicable, at least 90 percent of a monitoring path for various ranges of daily roadway traffic. A sampling site having a point analyzer probe located closer to a roadway than allowed by the Table E–1 requirements should be classified as middle scale rather than neighborhood or urban scale, since the measurements from such a site would more closely represent the middle scale. If an open path analyzer is used at a site, the monitoring path(s) must not cross over a roadway with an average daily traffic count of 10,000 vehicles per day or more. For those situations where a monitoring path crosses a roadway with fewer than 10,000 vehicles per day, one must consider the entire segment of the monitoring path in the area of potential atmospheric interference from automobile emissions. Therefore, this calculation must include the length of the monitoring path over the roadway plus any segments of the

monitoring path that lie in the area between the roadway and the minimum separation distance, as determined from Table E–1 of this appendix. The sum of these distances must not be greater than 10 percent of the total monitoring path length.

TABLE E–1 TO APPENDIX E OF PART 58. MINIMUM SEPARATION DISTANCE BETWEEN ROADWAYS AND PROBES OR MONITORING PATHS FOR MONITORING NEIGHBORHOOD AND URBAN SCALE OZONE (O_3) AND OXIDES OF NITROGEN (NO, NO_2, NO_X, NO_y)

Roadway average daily traffic, vehicles per day	Minimum distance [1] (meters)	Minimum distance [1, 2] (meters)
≤1,000	10	10
10,000	10	20
15,000	20	30
20,000	30	40
40,000	50	60
70,000	100	100
≥110,000	250	250

[1] Distance from the edge of the nearest traffic lane. The distance for intermediate traffic counts should be interpolated from the table values based on the actual traffic count.
[2] Applicable for ozone monitors whose placement has not already been approved as of December 18, 2006.

6.2 Spacing for Carbon Monoxide Probes and Monitoring Paths. (a) Street canyon and traffic corridor sites (microscale) are intended to provide a measurement of the influence of the immediate source on the pollution exposure of the population. In order to provide some reasonable consistency and comparability in the air quality data from microscale sites, a minimum distance of 2 meters and a maximum distance of 10 meters from the edge of the nearest traffic lane must be maintained for these CO monitoring inlet probes. This should give consistency to the data, yet still allow flexibility of finding suitable locations.

(b) Street canyon/corridor (microscale) inlet probes must be located at least 10 meters from an intersection and preferably at a midblock location. Midblock locations are preferable to intersection locations because intersections represent a much smaller portion of downtown space than do the streets between them. Pedestrian exposure is probably also greater in street canyon/corridors than at intersections.

(c) In determining the minimum separation between a neighborhood scale monitoring site and a specific roadway, the presumption is made that measurements should not be substantially influenced by any one roadway. Computations were made to determine the separation distance, and Table E–2 of this appendix provides the required minimum separation distance between roadways and a probe or 90 percent of a monitoring path. Probes or monitoring paths that are located closer to roads than this criterion allows should not be classified as a neighborhood scale, since the measurements from such a site would closely represent the middle scale. Therefore, sites not meeting this criterion should be classified as middle scale.

TABLE E–2 TO APPENDIX E OF PART 58. MINIMUM SEPARATION DISTANCE BETWEEN ROADWAYS AND PROBES OR MONITORING PATHS FOR MONITORING NEIGHBORHOOD SCALE CARBON MONOXIDE

Roadway average daily traffic, vehicles per day	Minimum distance [1] (meters)
≤10,000	10
15,000	25
20,000	45
30,000	80
40,000	115
50,000	135
≥60,000	150

[1] Distance from the edge of the nearest traffic lane. The distance for intermediate traffic counts should be interpolated from the table values based on the actual traffic count.

6.3 Spacing for Particulate Matter ($PM_{2.5}$, PM_{10}, Pb) Inlets. (a) Since emissions associated with the operation of motor vehicles contribute to urban area particulate matter ambient levels, spacing from roadway criteria are necessary for ensuring national consistency in PM sampler siting.

(b) The intent is to locate localized hot-spot sites in areas of highest concentrations whether it be from mobile or multiple stationary sources. If the area is primarily affected by mobile sources and the maximum concentration area(s) is judged to be a traffic corridor or street canyon location, then the monitors should be located near roadways with the highest traffic volume and at separation distances most likely to produce the highest concentrations. For the microscale traffic corridor site, the location must be between 5 and 15 meters from the major roadway. For the microscale street canyon site the location must be between 2 and 10 meters from the roadway. For the middle scale site, a range of acceptable distances from the roadway is shown in figure E–1 of this appendix. This figure also includes separation distances between a roadway and neighborhood or larger scale sites by default. Any site, 2 to 15 meters high, and further back than the middle scale requirements will generally be neighborhood, urban or regional scale. For example, according to Figure E–1 of this appendix, if a PM sampler is primarily influenced by roadway emissions and that sampler is set back 10 meters from a 30,000 ADT (average daily traffic) road, the site should be classified as microscale, if the sampler height is between 2 and 7 meters. If the sampler height is between 7 and 15 meters, the site should be classified as middle scale. If the sample is 20 meters from the same road, it will be classified as middle scale; if 40 meters, neighborhood scale; and if 110 meters, an urban scale.

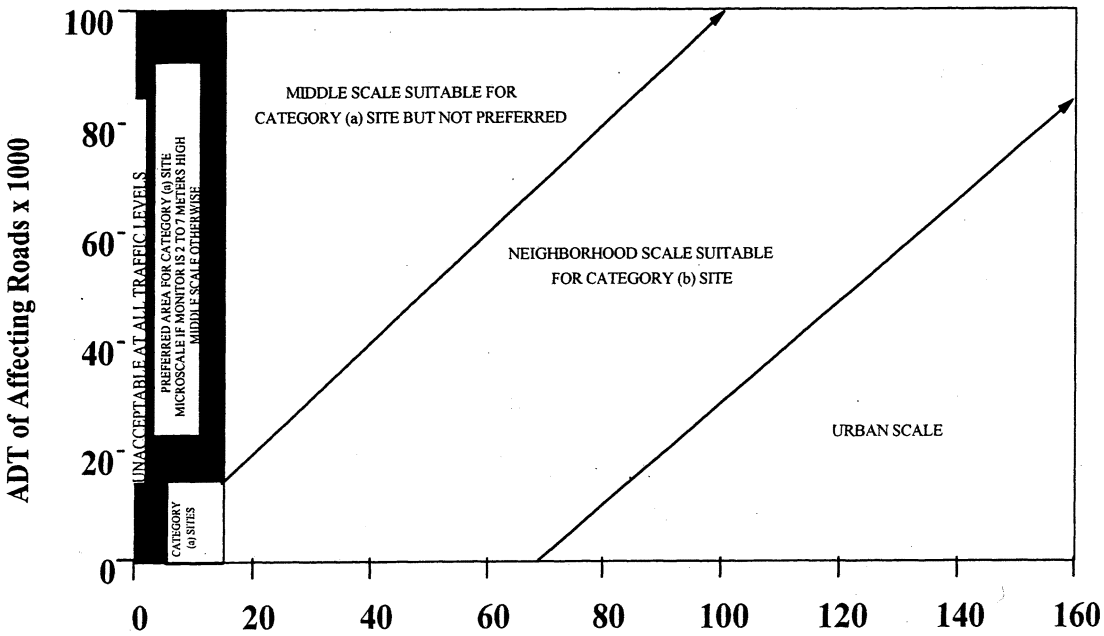

Figure E-1. Distance of PM samplers to nearest traffic lane (meters)

7. Cumulative Interferences on a Monitoring Path

(This paragraph applies only to open path analyzers.) The cumulative length or portion of a monitoring path that is affected by minor sources, trees, or roadways must not exceed 10 percent of the total monitoring path length.

8. Maximum Monitoring Path Length

(This paragraph applies only to open path analyzers.) The monitoring path length must not exceed 1 kilometer for analyzers in neighborhood, urban, or regional scale. For middle scale monitoring sites, the monitoring path length must not exceed 300 meters. In areas subject to frequent periods of dust, fog, rain, or snow, consideration should be given to a shortened monitoring path length to minimize loss of monitoring data due to these temporary optical obstructions. For certain ambient air monitoring scenarios using open path analyzers, shorter path lengths may be needed in order to ensure that the monitoring site meets the objectives and spatial scales defined in appendix D to this part. The Regional Administrator may require shorter path lengths, as needed on an individual basis, to ensure that the SLAMS sites meet the appendix D requirements. Likewise, the Administrator may specify the maximum path length used at NCore monitoring sites.

9. Probe Material and Pollutant Sample Residence Time

(a) For the reactive gases, SO_2, NO_2, and O_3, special probe material must be used for point analyzers. Studies [20–24] have been conducted to determine the suitability of materials such as polypropylene, polyethylene, polyvinyl chloride, Tygon®, aluminum, brass, stainless steel, copper, Pyrex® glass and Teflon® for use as intake sampling lines. Of the above materials, only Pyrex® glass and Teflon® have been found to be acceptable for use as intake sampling lines for all the reactive gaseous pollutants. Furthermore, the EPA[25] has specified borosilicate glass or FEP Teflon® as the only acceptable probe materials for delivering test atmospheres in the determination of reference or equivalent methods. Therefore, borosilicate glass, FEP Teflon® or their equivalent must be the only material in the sampling train (from inlet probe to the back of the analyzer) that can be in contact with the ambient air sample for existing and new SLAMs.

(b) For volatile organic compound (VOC) monitoring at PAMS, FEP Teflon® is unacceptable as the probe material because of VOC adsorption and desorption reactions on the FEP Teflon®. Borosilicate glass, stainless steel, or its equivalent are the acceptable probe materials for VOC and carbonyl sampling. Care must be taken to ensure that the sample residence time is kept to 20 seconds or less.

(c) No matter how nonreactive the sampling probe material is initially, after a period of use reactive particulate matter is deposited on the probe walls. Therefore, the time it takes the gas to transfer from the probe inlet to the sampling device is also critical. Ozone in the presence of nitrogen oxide (NO) will show significant losses even in the most inert probe material when the residence time exceeds 20 seconds.[26] Other studies [27–28] indicate that a 10-second or less residence time is easily achievable. Therefore, sampling probes for reactive gas monitors at NCore must have a sample residence time less than 20 seconds.

10. Waiver Provisions

Most sampling probes or monitors can be located so that they meet the requirements of this appendix. New sites with rare exceptions, can be located within the limits of this appendix. However, some existing sites may not meet these requirements and still produce useful data for some purposes. The EPA will consider a written request from the State agency to waive one or more siting criteria for some monitoring sites providing that the State can adequately demonstrate the need (purpose) for monitoring or establishing a monitoring site at that location.

10.1 For establishing a new site, a waiver may be granted only if both of the following criteria are met:

10.1.1 The site can be demonstrated to be as representative of the monitoring area as it would be if the siting criteria were being met.

10.1.2 The monitor or probe cannot reasonably be located so as to meet the siting criteria because of physical constraints (e.g., inability to locate the required type of site the necessary distance from roadways or obstructions).

10.2 However, for an existing site, a waiver may be granted if either of the criteria in sections 10.1.1 and 10.1.2 of this appendix are met.

10.3 Cost benefits, historical trends, and other factors may be used to add support to the criteria in sections 10.1.1 and 10.1.2 of this appendix, however, they in themselves, will not be acceptable reasons for granting a waiver. Written requests for waivers must be submitted to the Regional Administrator.

11. Summary

Table E–4 of this appendix presents a summary of the general requirements for probe and monitoring path siting criteria with respect to distances and heights. It is apparent from Table E–4 that different elevation distances above the ground are shown for the various pollutants. The discussion in this appendix for each of the pollutants describes reasons for elevating the monitor, probe, or monitoring path. The differences in the specified range of heights

are based on the vertical concentration gradients. For CO, the gradients in the vertical direction are very large for the microscale, so a small range of heights are used. The upper limit of 15 meters is specified for consistency between pollutants and to allow the use of a single manifold or monitoring path for monitoring more than one pollutant.

TABLE E–4 OF APPENDIX E TO PART 58. SUMMARY OF PROBE AND MONITORING PATH SITING CRITERIA

Pollutant	Scale (maximum monitoring path length, meters)	Height from ground to probe, inlet or 80% of monitoring path [1]	Horizontal and vertical distance from supporting structures [2] to probe, inlet or 90% of monitoring path [1] (meters)	Distance from trees to probe, inlet or 90% of monitoring path [1] (meters)	Distance from roadways to probe, inlet or monitoring path [1] (meters)
SO_2 [3,4,5,6]	Middle (300 m) Neighborhood Urban, and Regional (1 km).	2–15	> 1	> 10	N/A
CO [4,5,7]	Micro, middle (300 m), Neighborhood (1 km).	3±½: 2–15	> 1	> 10	2–10; see Table E–2 of this appendix for middle and neighborhood scales.
NO_2, O_3 [3,4,5]	Middle (300 m) Neighborhood, Urban, and Regional (1 km).	2–15	> 1	> 10	See Table E–1 of this appendix for all scales.
Ozone precursors (for PAMS) [3,4,5].	Neighborhood and Urban (1 km)	2–15	> 1	> 10	See Table E–4 of this appendix for all scales.
PM,Pb [3,4,5,6,8]	Micro: Middle, Neighborhood, Urban and Regional.	2–7 (micro); 2–7 (middle $PM_{10-2.5}$); 2–15 (all other scales).	> 2 (all scales, horizontal distance only).	> 10 (all scales).	2–10 (micro); see Figure E–1 of this appendix for all other scales.

N/A—Not applicable.

[1] Monitoring path for open path analyzers is applicable only to middle or neighborhood scale CO monitoring and all applicable scales for monitoring SO_2,O_3, O_3 precursors, and NO_2.

[2] When probe is located on a rooftop, this separation distance is in reference to walls, parapets, or penthouses located on roof.

[3] Should be >20 meters from the dripline of tree(s) and must be 10 meters from the dripline when the tree(s) act as an obstruction.

[4] Distance from sampler, probe, or 90% of monitoring path to obstacle, such as a building, must be at least twice the height the obstacle protrudes above the sampler, probe, or monitoring path. Sites not meeting this criterion may be classified as middle scale (see text).

[5] Must have unrestricted airflow 270 degrees around the probe or sampler; 180 degrees if the probe is on the side of a building.

[6] The probe, sampler, or monitoring path should be away from minor sources, such as furnace or incineration flues. The separation distance is dependent on the height of the minor source's emission point (such as a flue), the type of fuel or waste burned, and the quality of the fuel (sulfur, ash, or lead content). This criterion is designed to avoid undue influences from minor sources.

[7] For microscale CO monitoring sites, the probe must be >10 meters from a street intersection and preferably at a midblock location.

[8] Collocated monitors must be within 4 meters of each other and at least 2 meters apart for flow rates greater than 200 liters/min or at least 1 meter apart for samplers having flow rates less than 200 liters/min to preclude airflow interference.

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Appendix F—[Removed and Reserved]

38. Appendix F to part 58 is removed and reserved.

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Tuesday,
October 17, 2006

Part IV

Nuclear Regulatory Commission

10 CFR Parts 2, 50, 51 and 52

Licenses, Certifications, and Approvals for Nuclear Power Plants; Supplemental Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 50, 51 and 52

RIN 3150–AG24

Licenses, Certifications, and Approvals for Nuclear Power Plants; Supplemental Proposed Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Supplemental proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to supplement its proposed rule entitled ''Licenses, Certifications, and Approvals for Nuclear Power Plants,'' which was published on March 13, 2006 (71 FR 12782). The NRC is proposing to supplement that proposed rule by amending the regulations applicable to limited work authorizations (LWA), which allow limited construction activities on nuclear power plants to commence before a construction permit or combined license is issued. This supplemental proposed rule would modify the scope of activities that are considered construction requiring a LWA and would also make changes to the review and approval process for LWA requests. The NRC is proposing these changes to enhance the efficiency of its licensing and approval process for new nuclear reactors.

DATES: Submit comments by November 16, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number RIN 3150–AG24 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking Web site. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attn:* Rulemakings and Adjudications Staff.

E-mail comments to: SECY@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking Web site to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.* Comments may also be submitted via the Federal eRulemaking portal *http://www.regulations.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Geary Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone (301) 415–1639; e-mail: *GSM@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I.. Background
A. History of the Part 52 Rulemaking Proceeding
II. Discussion
A. History of the NRC's Concept of Construction and the LWA
B. NRC's Proposed Concept of Construction and the LWA (PRM–50–82)
C. NRC's Proposed Concept of Construction and the AEA
D. Proposed Supplement Complies With NEPA
1. NRC's Proposed Concept of Construction Is Consistent With the Legal Effect of NEPA
2. NRC's Proposed Concept of the ''Major Federal Action'' Is Consistent With NEPA Law
3. NRC's Phased Approval Approach Is not Illegal Segmentation Under NEPA
E. Inclusion of Additional Activities as ''Construction'' under § 50.10(b)
F. Phased Application and Approval Process
G. EIS Prepared, but Facility Never Constructed
III. Section-by-Section Analysis
IV. Specific Request for Comments
V. Availability of Documents
VI. Plain Language
VII. Agreement State Compatibility
VIII. Voluntary Consensus Standards
IX. Environmental Impact—Categorical Exclusion
X. Paperwork Reduction Act Statement
XI. Regulatory Analysis
XII. Regulatory Flexibility Act Certification
XIII. Backfit Analysis

I. Background

A. History of the Part 52 Rulemaking Proceeding

The NRC issued 10 CFR part 52 on April 18, 1989 (54 FR 15372), to reform its licensing process for future nuclear power plants. The rule added alternative licensing processes in 10 CFR part 52 for early site permits, standard design certifications, and combined licenses. These were additions to the two-step licensing process that already existed in 10 CFR part 50. The processes in 10 CFR part 52 allow for resolving safety and environmental issues early in the licensing proceedings and were intended to enhance the safety and reliability of nuclear power plants through standardization.

The NRC had planned to update 10 CFR part 52 after using the standard design certification process. The proposed rulemaking action began with the issuance of SECY–98–282, ''Part 52 Rulemaking Plan,'' on December 4, 1998. The Commission issued a staff requirements memorandum on January 14, 1999 (SRM on SECY–98–282), approving the NRC staff's plan for revising 10 CFR part 52. Subsequently, the NRC obtained considerable stakeholder comment on its planned action, conducted three public meetings on the proposed rulemaking, and twice posted draft rule language on the NRC's rulemaking Web site before issuance of the initial proposed rule on July 3, 2003 (68 FR 40026). However, a number of factors led the NRC to question whether the July 2003 proposed rule would meet the NRC's objective of improving the effectiveness of its processes for licensing future nuclear power plants (71 FR 12782). As a result, the NRC decided that a substantial rewrite and expansion of the original proposed rulemaking was desirable so that the agency may more effectively and efficiently implement the licensing and approval processes for future nuclear power plants under part 52. Accordingly, the Commission decided to revise the July 2003 proposed rule and published the revised proposed rule for public comment on March 13, 2006

(71 FR 12782). The public comment period on the March 2006 proposed rule ended on May 30, 2006.

II. Discussion

A. History of the NRC's Concept of Construction and the LWA

Section 101 of the Atomic Energy Act of 1954, as amended (AEA) prohibits the manufacture, production, or use of a commercial nuclear power reactor, except where the manufacture, production or use is conducted under a license issued by the Commission. While construction of a nuclear power reactor is not mentioned in section 101, section 185 of the AEA requires that the Commission grant construction permits to applicants for licenses to construct or modify production or utilization facilities, if the applications for such permits are acceptable to the Commission. However, the term construction is not defined anywhere in the AEA or in the legislative history of the Act.

To prevent the construction of production or utilization facilities before a construction permit is issued, the NRC proposed a regulatory definition of construction in 1960 (25 FR 1224; February 11, 1960). The definition of construction was adopted in a final rule that same year and codified in 10 CFR 50.10(b) (25 FR 8712; September 9, 1960). As promulgated, § 50.10(b) stated that no person shall begin the construction of a production or utilization facility on a site on which the facility is to be operated until a construction permit had been issued. Construction was defined in § 50.10(b) as including:

> pouring the foundation for, or the installation of, any portion of the permanent facility on the site; but [not to] include: (1) Site exploration, site excavation, preparation of the site for construction of the facility and construction of roadways, railroad spurs and transmission lines; (2) Procurement or manufacture of components of the facility; (3) Construction of non-nuclear facilities (such as turbo-generators and turbine buildings) and temporary buildings (such as construction equipment storage sheds) for use in connection with the construction of the facility; and (4) with respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to section 104a. or section 104c. of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility. (For example, the construction of a college laboratory building with space for installation of a training reactor is not affected by this paragraph). (25 FR 8712; September 9, 1960)

The definition of construction remained unchanged until 1968, when the driving of piles was specifically excluded from the definition (33 FR 2381; January 31, 1968). This change was implemented by amending § 50.10(b)(1) to read: ''Site exploration, site excavation, preparation of the site for construction of the reactor, including the driving of piles, and construction of roadways, railroad spurs, and transmission lines.'' The rationale for this change, as articulated in the proposed rule (32 FR 11278; August 3, 1967), seems to have been that the driving of piles was closely related to ''preparation of the site for construction'' and that the performance of this type of site preparation activity would not affect the NRC's subsequent decision to grant or deny the construction permit. With the exception of the exclusion of the driving of piles from the definition of construction in 1968, the NRC's interpretation of the scope of activities requiring a construction permit under the AEA has remained largely unchanged.

However, following the enactment of the National Environmental Policy Act of 1969, as amended (NEPA), the Commission adopted a major amendment to the definition of construction in § 50.10 (37 FR 5745; March 21, 1972). In that rulemaking, the Commission adopted a much more expansive concept of construction. Specifically, a new § 50.10(c) was adopted stating that no person shall effect ''commencement of construction'' of a production or utilization facility on the site on which such facility will be constructed until a construction permit has been issued. ''Commencement of construction'' was defined as

> any clearing of land, excavation or other substantial action that would adversely affect the natural environment of a site and construction of nonnuclear facilities (such as turbogenerators and turbine buildings) for use in connection with the facility, but does not mean: (1) Changes desirable for the temporary use of the land for public recreational uses, necessary boring to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site or to the protection of environmental values; (2) Procurement or manufacture of components of the facility; and (3) With respect to production or utilization facilities, other than testing facilities, required to be licensed pursuant to section 104a or section 104c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility * * * . (37 FR 5748)

The Commission explained that expansion of the NRC's permitting authority was:

> [C]onsistent with the direction of the Congress, as expressed in section 102 of the National Environmental Policy Act of 1969, that, to the fullest extent possible, the policies, regulations and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in that Act. Since site preparation constitutes a key point from the standpoint of environmental impact, in connection with the licensing of nuclear facilities and materials, these amendments will facilitate consideration and balancing of a broader range of realistic alternatives and provide a more significant mechanism for protecting the environment during the earlier stages of a project for which a facility or materials license is being sought. (37 FR 5746)

Thus, the Commission's interpretation of its responsibilities under NEPA, not the AEA, was the driving factor leading to its adoption of § 50.10(c).[1]

Two years after the expansion of the Commission's permitting authority resulting from the promulgation of § 50.10(c), the NRC promulgated § 50.10(e) (39 FR 14506; April 24, 1974). This provision created the current LWA process, which was added to allow site preparation, excavation and certain other on-site activities to proceed before issuance of a construction permit. Prior to the promulgation of § 50.10(e), NRC permission to engage in site preparation activities before a construction permit was issued could only be obtained via an exemption issued under § 50.12. The provisions of § 50.10(e) allowed the NRC to authorize the commencement of both safety-related (known as ''LWA–II'' activities) and non safety-related (known as ''LWA–I'' activities) on-site construction activities before issuance of a construction permit if the NRC had completed a final environmental impact statement (FEIS) on the issuance of the construction permit and the presiding officer in the construction permit proceeding had made the requisite environmental and, in the case of an LWA–II, safety-related findings.

B. NRC's Proposed Concept of Construction and the LWA (PRM–50–82)

The NRC received several comments in response to its Part 52 proposed rule revision published on March 13, 2006 (71 FR 12782), including comments submitted by the Nuclear Energy Institute (NEI) dated May 25, 2006.[2]

[1] See The Carolina Power and Light Company (Shearon Harris Nuclear Power Plant, Units 1, 2, 3 and 4), 7 AEC 939, 943 (June 11, 1974) (hereinafter Shearon Harris) (''The regulations were revised in 1972, not because of any requirements of the Atomic Energy Act, but rather to implement the precepts of NEPA which had then recently been enacted.''); Kansas Gas and Electric Company (Wolf Creek Nuclear Generating Station, Unit No. 1), 5 NRC 1, 5 (Jan. 12, 1977) (explaining that NEPA led the AEC to amend its regulations in several respects, including the changes to 50.10(c)).

[2] See Letter from Adrian P. Heymer, Nuclear Energy Institute to Annette L. Vietti-Cook,

Continued

NEI's comments suggested modifications to the NRC's LWA process including: (1) That non-safety related ''LWA–I'' activities, currently reflected in § 50.10(c) and § 50.10(e)(1), be allowed to proceed without prior authorization from the NRC, and (2) that the approval process for safety-related ''LWA–II'' activities be accelerated. NEI's comment also stated that the current definition of construction in § 50.10(b) reflects the correct interpretation of the Commission's licensing authority under the AEA.

Further, NEI's comment letter stated that ''[t]o the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking.'' The NRC has determined that the changes suggested in the NEI comment could not be incorporated into the final Part 52 rule without re-noticing. Therefore, the Commission has decided that the NEI letter meets the sufficiency requirements described in 10 CFR 2.802(c) and is docketing the letter as a petition for rulemaking (PRM–50–82). Furthermore, the NRC has determined that it is appropriate to seek public comment on the action requested by petitioner within the context of this supplemental proposed rule, which has been developed in response to NEI's request, as allowed under 10 CFR 2.802(e).

NEI supported its suggested changes to the LWA process, stating that the business environment requires that new plant applicants seek to minimize the time interval between a decision to proceed with a combined license application and the start of commercial operation. In order to achieve this goal, NEI states that non safety-related ''LWA–I'' activities would need to be initiated up to two years before the activities currently defined as ''construction'' in § 50.10(b). In NEI's view, the current LWA approval process would constrain the industry's ability to use modern construction practices and needlessly add eighteen (18) months to estimated construction schedules for new plants that did not reference an early site permit (ESP) with LWA authority.

The NRC agrees, in part, with NEI's comments and is now issuing this supplement to the March 13, 2006 proposed rule.[3] This supplemental proposed rule would narrow the scope of activities requiring permission from the NRC in the form of limited work authorizations (LWA) by eliminating the concept of ''commencement of construction'' currently described in § 50.10(c) and the authorization described in § 50.10(e)(1). Instead, under the supplemental proposed rule, NRC authorization would only be required before undertaking activities that have a reasonable nexus to radiological health and safety and/or common defense and security (i.e. excavation, subsurface preparation, installation of the foundation, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report). While this redefinition of ''construction'' would result in fewer activities requiring NRC permission in the form of a LWA, it also redefines certain activities (such as the driving of piles), that are currently excluded from the regulatory definition of construction given in § 50.10(b), as construction requiring a LWA.

Further, this proposed rule would provide an optional, phased application and approval procedure for construction permit and combined license applicants to obtain limited work authorizations. Specifically, the proposed rule would provide an environmental review and approval process for LWA requests that would allow the NRC to grant an applicant permission to engage in LWA activities after completion of a limited environmental impact statement addressing those activities, but before completion of the comprehensive environmental impact statement addressing the underlying request for a construction permit or combined license. Finally, this proposed rule would specifically address the environmental review required in situations where the LWA activities are to be conducted at sites for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and for which a construction permit was issued, but construction of the plant was never completed.

C. NRC's Proposed Concept of Construction and the AEA

This change is fully consistent with the Commission's radiological health and safety and common defense and security responsibilities under the AEA.[4] Specifically, the Commission has determined that the site-preparation activities that would no longer be considered construction under this proposed rule do not have a reasonable nexus to radiological health and safety, or the common defense and security. Further, as previously mentioned, the term ''construction'' is not defined in the AEA or in the Act's legislative history. Instead of expressly defining the term in the AEA, Congress entrusted the agency with the responsibility of determining what activities constitute construction.[5] The Commission believes that its proposed definition of the term ''construction'' is reasonable.

D. Proposed Supplement Complies With NEPA

1. NRC's Proposed Concept of Construction is Consistent with the Legal Effect of NEPA

The proposed change in the definition of construction is also consistent with the legal effect of NEPA. Section 50.10(c) was originally added to part 50 due to the interpretation that the enactment of NEPA, not a change in the powers delegated to the agency in the AEA, required the NRC to expand its permitting/licensing authority. However, subsequent judicial decisions have made it clear that NEPA is a procedural statute and does not expand the jurisdiction delegated to an agency by its organic statute.[6] Therefore, while NEPA may require the NRC to consider the environmental effects caused by the exercise of its permitting/licensing authority, the statute cannot be the source of the expansion of the NRC's authority to require construction permits, combined licenses, or other forms of permission for activities that are not reasonably related to radiological health and safety or protection of the common defense and security. Since NEPA cannot expand the

Secretary, U.S. Nuclear Regulatory Commission, Pre-Licensing Construction Activity and Limited Work Authorization Issues relating to NRC Proposed Rule, ''Licenses, Certifications and Approvals for Nuclear Power Plants,'' 71 FR 12, 782 (March 13, 2006) (RIN 3150–AG24) (May 25, 2006).

[3] Industry stakeholders did not raise issues relating to perceived problems either with the LWA process or, more generally, with the definition of construction during the period leading to the March 2006 proposed rule and no such changes were suggested in the proposed rule. Therefore, the NRC is providing notice and an opportunity for public comment on the changes proposed in this supplement. The Commission may adopt this supplemental proposed rule either as part of the final rule promulgating the changes to Part 52 (see 71 FR 12782; March 13, 2006), or in a separate final rule.

[4] See *State of New Hampshire* v. *Atomic Energy Commission*, 406 F.2d 170, 174–75 (1st Cir. 1969).

[5] Shearon Harris, 7 AEC 939.

[6] See, e.g., *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 350–52 (1989); *Natural Resources Defense Counsel* v. *U.S. Environmental Protection Agency,* 822 F.2d 104, 129 (D.C. Cir 1987); *Kitchen* v. *Federal Communications Commission,* 464 F.2d 801, 802 (D.C. Cir. 1972).

Commission's permitting/licensing authority under the AEA, the elimination of the blanket inclusion of site preparation activities in the definition of construction under § 50.10(c) does not violate NEPA.

2. NRC's Proposed Concept of the ''Major Federal Action'' is Consistent with NEPA Law

Because the AEA does not authorize NRC to require an applicant to obtain permission before undertaking site preparation activities that do not implicate radiological health and safety or common defense and security, as a general matter the Commission considers these activities ''non-Federal action'' for the purposes of implementing its NEPA responsibilities. Generally, non-Federal actions are not subject to the requirements of NEPA.[7]

Further, the Commission believes that these non-Federal site preparation activities would not generally be ''federalized'' if the Commission were to ultimately grant a combined license or construction permit. The grant of a construction permit or combined license by the Commission is not a legal condition precedent to these non-Federal, site preparation activities. While the Commission recognizes that there may be a ''but for'' causal relationship between certain non-Federal site preparation activities and the major Federal action of issuing a construction permit or combined license, such a ''but for'' causal relationship is not sufficient to require non-Federal site preparation activities to be treated as Federal action for the purposes of NEPA.[8]

In addition, under the proposed definition of construction, the Commission does not believe that it has sufficient ability or discretion to influence or control the non-Federal, site preparation activities to the extent that its influence or control would constitute practical or factual veto power over the non-Federal action. Further, the Commission does not believe that allowing the non-Federal, site preparation activities to be undertaken would restrict its consideration of alternative sites or the need to assess whether there is an ''obviously superior'' site. Specifically, while the Commission recognizes that narrowing the definition of construction may result in substantial changes to the physical properties of a site, many of the fundamental elements that enter into a determination of the existence of an ''obviously superior'' site would not be affected by the changes to those physical properties. For example, meteorology and seismology would not be affected in any significant way by the non-Federal site preparation activities.

However, while the effects caused by the non-Federal, site preparation activities would not be considered effects of the Commission's licensing action, the effects of the non-Federal activities would be considered during any subsequent ''cumulative impacts'' analysis. Specifically, the effects of the non-Federal activities would be considered in order to establish a baseline against which the incremental effect of the Commission's major Federal action (i.e. issuing a LWA, construction permit or combined license) would be measured. These incremental impacts may be additive or synergistic.

3. NRC's Phased Approval Approach is not Illegal Segmentation Under NEPA

The phased application and approval of LWAs does not raise the concerns underlying the prohibition of segmentation under NEPA law. Generally, the NEPA segmentation problem arises when the environmental impacts of projects are evaluated in a piecemeal fashion and, as a result, the comprehensive environmental impacts of the entire Federal action are never considered or are only considered after the agency has committed itself to continuation of the project. Another associated segmentation problem arises when pieces of a Federal action are evaluated separately and, as a result, none of the individual pieces are considered ''major federal actions'' requiring an EIS.[9]

Neither of these segmentation concerns are presented by the approach proposed here. First, under both LWA application options, the environmental effects associated with the LWA activities and the project as a whole (i.e. issuance of a construction permit or combined license) would be evaluated in an EIS. Therefore, the segmentation problem of considering a project in phases, thereby avoiding completion of an EIS, is not an issue. In addition, all of the environmental impacts associated with the construction and operation of the proposed plant, including the impacts associated with the LWA activities, would be considered together, through incorporation by reference, in the EIS prepared on the construction permit or combined license application. This comprehensive consideration of environmental impacts would take place before the NRC is committed to issuing any construction permit or combined license. The fact that the NRC will not have prejudged the ultimate decision of whether to grant a construction permit or a combined license by issuing the LWA, coupled with the requirement that the site redress plan be implemented in the event that the permit or license is ultimately not issued, also ensures that issuance of the LWA would not foreclose reasonable alternatives.

In addition, the proposed application and approval process is consistent with the Commission's previously expressed position that NEPA does not, as a general matter, prohibit an agency from undertaking part of a project without a complete environmental analysis of the whole project.[10] The key factors used to support the Commission's position in Clinch River were; (1) That the site preparation activities in that case would not result in irreversible or irretrievable commitments to the remaining portions of the project and (2) the environmental impacts of the site preparation activities allowed in that case were substantially redressable.[11]

These considerations are reflected in the provisions of the supplemental proposed rule. Specifically, § 50.10(c)(6) of the proposed rule states that any activity undertaken pursuant to a LWA are entirely at the risk of the applicant, that the issuance of the LWA has no bearing on whether the construction permit or combined license should be issued, and that the environmental impact statement associated with the underlying request will not consider the sunk costs associated with the LWA activities. In addition, § 50.10(c)(3) would require an applicant requesting a LWA to submit a plan for redress of the site to be implemented in the event that the LWA holder is ultimately not issued a construction permit or combined license. This site redress plan must ''achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws'' in the event that the LWA holder is not ultimately issued a construction permit or combined license. The redress plan would achieve this objective by addressing site impacts resulting from LWA activities. Impacts associated with pre-LWA activities would not be addressed in the redress plan. Further,

[7] *Save the Bay, Inc.* v. *U.S. Army Corps of Engineers,* 610 F.2d 322, 326 (5th Cir. 1980).

[8] See *Landmark West!* v. *U.S. Postal Service,* 840 F.Supp. 994, 1006 (S.D.N.Y. 1993) (citing cases).

[9] Daniel R. Mandelker, NEPA Law and Litigation, 9–25 (2nd ed. 2004).

[10] See Tennessee Valley Authority (Clinch River Breeder Reactor Plant), 16 NRC 412, 424 (Aug. 17, 1982) (hereinafter Clinch River).

[11] *Id.*

§ 50.10(c)(7) would require that the site redress plan be implemented within a reasonable time and that the redress of the site occur within eighteen (18) months of the Commission's final decision denying a construction permit or combined license.

It should be noted that while redress of site impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities. The primary purpose of the site redress plan is to ensure that impacts associated with any LWA activities performed at the site will not prevent the site from being utilized for a permissible, non-nuclear alternative use. In this way, the redress plan helps to preserve the Commission's ability to objectively evaluate an application for a construction permit or combined license, despite the fact that LWA activities have been undertaken at the site.

E. Inclusion of Additional Activities as ''Construction'' Under § 50.10(b)

A significant change proposed in this supplemental proposed rule is the inclusion of activities—such as the driving of piles and excavation of foundations for safety-related structures—in the definition of construction that are not currently defined as construction in § 50.10(b).

Although the driving of piles was not expressly included in the definition of ''construction'' contained in § 50.10(b) before the amendment of § 50.10(b)(1) in 1968, this activity was generally considered to be encompassed in the existing definition of construction at that time (See 33 FR 2381; January 31, 1968). The proposed rule suggesting that the driving of piles be expressly excluded from the definition of construction simply states that the ''activity is closely related to, and may be appropriately included in'' site preparation activities, which were not considered construction (32 FR 11278; August 3, 1967).[12] The rationale for not including the driving of piles, and site preparation activities generally, in the definition of construction seems to have been that these activities would have no effect on the NRC's ultimate decision to grant or deny a construction permit and that these activities were undertaken entirely at the applicant's risk (32 FR 11278).

The NRC does not currently believe that the exclusion of a site preparation activity from the definition of construction should hinge on this factor. The Commission believes that the site preparation activities described in § 50.10(b) of this supplement, including the driving of piles and excavation of foundations in certain situations, have a reasonable nexus to radiological health and safety, and/or common defense and security and, therefore, are properly considered ''construction'' as that term is used in § 185 of the AEA. In addition, the inclusion of these activities in the definition of construction (i.e. requiring an LWA before they are undertaken), coupled with the phased approval process suggested in this supplemental proposed rule, would allow for early resolution of the safety issues associated with these activities. Early resolution of safety issues is consistent with the general rationale underlying the licensing and permitting processes provided in 10 CFR part 52.

F. Phased Application and Approval Process

Another significant change suggested in this supplemental proposed rule is the modification of the procedure for obtaining LWA approval by implementing an optional phased application and approval process. Specifically, as proposed, § 2.101(a)(9) would allow applicants for construction permits and combined licenses the option of submitting either: (1) A complete application or (2) a two part application with part one including information required for the NRC to make a decision on the applicant's request to undertake LWA activities and part two containing all other information required to obtain the underlying license or permit. The proposed rule would allow the NRC to consider the environmental impacts attributable to the requested LWA activities separately, either as part of a comprehensive environmental impact statement (EIS) in the case where a complete application is submitted, or in a separate EIS addressing only the LWA activities in the case of a two-part application. After consideration of the environmental impacts and the relevant safety-related issues associated with the LWA activities, the NRC would be permitted to allow the applicant to undertake the LWA activities, even if the EIS on the underlying request (i.e. construction permit or combined license) is not complete.

The NRC believes that this phased application/approval process would add efficiencies to the licensing/construction process by preventing unnecessary delay in construction schedules, which would result if issuance of an LWA for safety-related activities were delayed until the final environmental impact statement and adjudicatory hearing on the entire underlying license application were complete. In addition, the proposed application/approval process would result in the timely resolution of relevant safety and environmental issues at an earlier stage in the licensing process. As previously discussed, the NRC believes that these efficiencies can be gained without compromising the agency's NEPA responsibilities, as the phased approach presented in this supplemental proposed rule does not constitute illegal segmentation.

G. EIS Prepared, but Facility Never Constructed

The supplemental proposed rule also specifically addresses the situation where a request is made to perform LWA activities at a site for which an EIS has previously been prepared for the construction and operation of a nuclear power plant, and a construction permit has been issued, but construction of the plant was never completed. In this special situation, the proposed supplement would allow an applicant to reference the previous EIS in its environmental report, but requires that the applicant identify any new and significant information material to the matters required to be addressed in the proposed § 51.49(a). Further, in these special cases the proposed supplement would allow the NRC to incorporate the previous EIS by reference when preparing its draft EIS on the LWA activities. The draft EIS on the LWA request would be limited to the consideration of any significant new information dealing with the environmental impacts of construction, relevant to the activities to be carried out under the LWA. Further, in a hearing on issuance of an LWA at such sites, the presiding officer would be limited to determining whether there is significant new information pertaining to the environmental impacts of the construction activities encompassed by the previous EIS that are analogous to the activities to be conducted under the LWA. The presiding officer would evaluate significant new information indetermining whether an LWA should be issued as proposed by the Director of Nuclear Reactor Regulation.

This provision is designed to gain efficiency by using existing environmental impact statements to evaluate the environmental impacts of

[12] The proposed rule language was promulgated without modification in the final rule. 33 FR 2381.

activities to be performed under an LWA. The Commission believes that this practice is appropriate because the referenced environmental review will come in the form of a FEIS prepared by NRC staff for sites on which permission to construct a nuclear power plant was ultimately granted by the Commission. The Commission understands that the activities proposed in a current LWA request may be different from the activities proposed and analyzed in the previous FEIS referenced by an applicant and relied upon by NRC staff. However, it is the Commission's intent that if such differences will likely result in significant changes to the environmental impacts caused by the LWA activities currently proposed by the applicant, then the differences should be considered ''new and significant information'' material to the environmental impacts that may reasonably be expected to result from the LWA activities and, therefore, should be addressed in the applicant's environmental report, analyzed by the staff in a supplement to the existing FEIS, and considered by the presiding officer.

Further, for the reasons previously discussed in section D.3, the Commission does not believe that authorizing LWA activities before completion of the FEIS on the combined license or construction permit would have the effect of prejudging the license/permit, or foreclosing reasonable alternatives.

III. Section-by-Section Analysis

Part 2

Section 2.101 Filing of Application

Section 2.101 would be revised to add a new paragraph (a)(9), which would state that an applicant for a construction permit or combined license may submit a request for an LWA either as part of a complete application under paragraphs (a)(1) through (4), or in two parts under this paragraph (i.e., a ''phased LWA application''). If the LWA application is submitted as part of a complete construction permit or operating license application, the application must include the information required by § 50.10(c).

If the application is a phased LWA application, the first part must contain the information required by § 50.10(c) on the LWA, as well as the general information required of all production and utilization facility applicants under § 50.33(a) through (f). The second part of the application would contain the remaining information otherwise required to be filed in a complete application under § 2.101(a)(1) thorough (4). However, the applicant would have the further option of submitting part two in additional subparts in accordance with § 2.101(a–1). The second part (or the first subpart of multiple subparts under § 2.101(a–1)) must be filed no later than twelve (12) months after the filing of part one. Part two of the application (or the first subpart of any additional subparts submitted in accordance with § 2.101(a–1)) must be submitted no later that twelve (12) months after submission of part one of the application.

An applicant for an early site permit may not submit its LWA application in advance of the underlying early site permit application, and therefore is not permitted to use the procedures of Subpart F.

Section 2.104 Notice of Hearing

Paragraph (d)(1)(iii) of § 2.104 would be modified to more clearly refer to the authority requested under § 52.17(c) as the limited work authorization under § 50.10.

Subpart F

The title of Subpart F would be revised to reflect the broader scope of matters covered under this section, as described under § 2.600.

Section 2.600 Scope of Subpart

The statement of scope in § 2.600 would be revised to reflect the new set of procedures for phased LWA applications in proposed §§ 2.641 through 2.649.

Section 2.601 Applicability of Other Sections

Section 2.601 would be corrected to add references to subparts C, L and N of part 2, in order to make clear that these subparts (in addition to subparts A and G) apply to applications and proceedings under subpart F, except as specifically provided in subpart F.

Section 2.606 Partial Decision on Site Suitability Issues

Paragraph (a) of § 2.606, which provides that a LWA may not be issued without completion of the ''full review'' required by NEPA, would be revised to remove the reference to a LWA, inasmuch as LWAs would now be covered in §§ 2.641 through 2.649.

Section 2.641 Filing Fees

Section 2.641, which is comparable to current § 2.602, provides that a phased LWA application shall be accompanied by the applicable filing fees in § 50.30(e) and part 170 of this chapter.

Section 2.643 Acceptance and Docketing of Application for Limited Work Authorization

Section 2.643, which is comparable to current § 2.603, describes the acceptance and docketing requirements for phased LWA applications, and the requirement for publication in the Federal Register of a notice of docketing. Paragraph (a) provides that each part of the application, when first received, will be treated as a tendered application and assessed for sufficiency. If the submitted part of the application is determined to be incomplete, the Director of NRR (Director) will inform the applicant. The determination of completeness will generally be made in 30 days, barring unusual circumstances.

Under paragraph (b), the Director will docket part one of the application only if that part is ''complete.'' The NRC would use the existing guidelines and practices for determining the completeness of applications under this section, as are used in determining completeness under § 2.101. Upon docketing, the Director will assign a docket number that will be used throughout the entire proceeding (including that part of the proceeding on part two of the application). Under paragraph (c), the Director would make the designated distributions to the Governor of the state in which the nuclear power plant will be located, and publish a notice of docketing in the **Federal Register**. Often in practice, the notice of hearing required by the AEA is included in the notice of docketing, but as with existing applications, this will remain a matter of discretion by the NRC, who will determine what is the most efficient course of action in this regard.

Paragraph (d) provides that part two of the application will be docketed, as with part one, when it is determined to be complete. The Commission reiterates that ''part two'' could be submitted in several subparts, if the applicant chose to take advantage of the provisions of § 2.101(a–1), which provides for submission of applications in three parts.

Finally, under paragraph (e), the Director will publish a second notice of docketing in the **Federal Register**, in this case for part two of the application. As with the notice of docketing for part one, the notice of docketing for part two may also include a notice of hearing on the second part of the application.

The Commission notes that nothing in § 2.101(a)(9), or any part of subpart F, requires that the hearing on part one of the application be completed and an initial decision issued by the presiding

officer, before part two of the application is filed.

Section 2.645 Notice of Hearing

Section 2.645, which is comparable to current § 2.604, sets forth the content of the notice of hearing for each of the two parts of the proceeding. Paragraph (a) provides that the notice of hearing for part one specify that the hearing will relate only to consideration of the matters related to § 50.33(a) through (f), and the limited work authorization issues under review. Although not explicitly stated in this paragraph, interested persons who seek to intervene in the hearing on part one of the application must file a petition to intervene in accordance with the notice of hearing, and § 2.309.

Under paragraph (b), a supplementary notice of hearing will be published in the **Federal Register** when part two of the application is docketed. This provides a second opportunity for interested persons to file petitions to intervene with respect to the matters relevant to part two of the application. These petitions must be filed within the time period specified in the notice of hearing, and must meet the applicable requirements of subpart C of part 2, including the contention requirements in § 2.309.

Paragraph (c) of the proposed rule differs somewhat from § 2.604, in that the Commission proposes not to allow a party admitted in part one of the proceeding, who did not withdraw or was not otherwise dismissed, to automatically continue as a party in phase two of the proceeding. Instead, each party who wishes to participate in the second phase must submit a second petition to intervene in accordance with § 2.309, but the petition need not address the interest and standing requirements in § 2.309(d). The petition must be filed within the time period provided by the supplementary notice of hearing published in the **Federal Register** for part two of the application.

As noted in the section-by-section analysis for § 2.643, nothing in § 2.101(a)(9) or subpart F requires that the hearing on part one of the application be completed and an initial decision issued by the presiding officer, before part two of the application is filed. Thus, there may be simultaneous hearings on parts one and two of the application. However, as reflected in paragraph (e), the Commission's intent is that the membership of the Atomic Safety and Licensing Board designated for hearings under part one be the same as for the hearings under part two, to the extent practical and consistent with timely completion of each hearing.

Section 2.647 [Reserved]

This section is reserved for future use by the Commission.

Section 2.649 Partial Decisions on Limited Work Authorization

Section 2.649, which is comparable to § 2.606, denotes the provisions in subparts C and G relative to issues such as oral arguments, immediate effectiveness of the presiding officer's initial decision, and petitions for Commission review, that apply to partial initial decisions on a LWA rendered in accordance with this subpart. This section also states that the LWA may not be issued without completion of the environmental review required for LWAs under subpart A of part 51. Finally, this section provides that the time periods for the Commission to exercise its review and sua sponte authority are the same time periods provided for in part 2 with respect to a final decision on issuance of a construction permit or combined license.

Part 50

Section 50.10 License Required; Limited Work Authorization

Paragraph (a). This paragraph, which is unchanged from the current rule, prohibits any person within the United States from transferring or receiving in interstate commerce, manufacturing, producing, transferring, acquiring, possessing, or using any production or utilization facility except as authorized by a license issued by the Commission, or as provided in § 50.11.

Paragraph (b). This paragraph, which is substantially modified from the current rule, prohibits any person from beginning the ''construction'' of a production or utilization facility on a site on which the facility is to be operated until that person has been issued a construction permit, a combined license under part 52, or a limited work authorization under paragraph (c) of this section.

The remainder of this paragraph is devoted to specifying what activities are, and are not, deemed to constitute ''construction'' for purposes of this paragraph's prohibition. Activities, such as site clearing, grading, site exploration, test boring, erection of temporary buildings and erection of permanent structures which are not required to be described in the site safety analysis report, preliminary safety analysis report, or final safety analysis report, would not be regarded as ''construction,'' and no NRC approval would be needed to conduct those activities. The only work that would be considered construction would be the excavation, subsurface preparation, and on-site, in-place fabrication, erection, integration or testing (including the installation of foundations) of any structure, system or component required by the Commission's rules and regulations to be described in the site safety analysis report, preliminary safety analysis report, or final safety analysis report. The term, ''on-site, in place, fabrication, erection, integration or testing'' is intended to describe the historical process of constructing a nuclear power plant in its final, on-site location, where components or modules are integrated into the final, in-plant location and elevation. The definition is intended to exclude persons from having to obtain a LWA, construction permit, or combined license, in order to fabricate, assemble and test components and modules in a shop building, warehouse, or laydown area located on-site.

Thus, the proposed redefinition of construction for the most part returns to the pre-1972 definition of ''construction'' in § 50.10(b), and removes the need for NRC approval to conduct the activities currently described in § 50.10(e)(1), except in two important respects. First, whereas existing § 50.10(b) allows the driving of piles for the facility, proposed § 50.10(b) would not permit driving of piles for any structure, system or component required to be described in an SSAR, PSAR, or FSAR unless NRC permission is obtained in the form of a LWA, construction permit, or combined license. Second, existing § 50.10(e)(1) allows a person, with NRC permission in the form of a LWA, to excavate and install the structural foundations for any structure, systems and components ''which do not prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public.'' The proposed redefinition would not remove the need for NRC approval, but substitutes a slightly different scope of structures, systems and components whose excavation and foundation installation may be allowed under an LWA, viz., those which are required to be described in the FSAR.

''Excavation,'' as used in paragraph (b), excludes initial site grading to attain the final ground elevation, and erosion control measures to preclude run-off, at the location where further excavation will be required for a structure, systems or component required by the Commission's regulations to be described in the FSAR. By contrast, the removal of any soil, rock, gravel or other material below the final ground

elevation, in preparation for the placement of the foundation and associated retaining walls, is excavation that may not be performed without an LWA, construction permit, or combined license under part 52. The ''driving of piles'' not related to ensuring the structural stability or integrity of any structure, systems or component required by the Commission's regulations to be described in the FSAR does not fall within the definition of construction in this paragraph. Therefore, piles driven to support the erection of a bridge for a temporary or permanent access road would not be considered ''construction'' under this section and may be performed without a LWA, construction permit, or combined license. ''Installation of the foundation,'' means soil compaction; the installation of drainage systems and geofabric; the placement of concrete (e.g., ''mudmats'') or other materials which will not be removed prior to placement of the foundation of a structure; the placement and compaction of a subbase; the installation of reinforcing bars to be incorporated into the foundation of the structure; the erection of concrete forms for the foundations that will remain in-place permanently (even if non-structural); and placement of concrete or other material constituting the foundation of any structure, systems or component required by the Commission's regulations to be described in the FSAR. Foundation installation activities will require a LWA, construction permit, or combined license.

Construction is deemed to also include the ''on-site, in-place,'' fabrication, erection, integration or testing activities for any structure, system or component required by the Commission's regulations to be described in the FSAR. The use of the term, ''on-site, in place,'' is intended to allow such structures, systems and components, including any ''modules'' and subassemblies, to be fabricated, assembled and tested in a shop building, warehouse, or laydown area located on-site without a LWA, construction permit, or combined license. However, the installation or integration of that structure, system, or component into its final location in the reactor would require either a construction permit or combined license. The Commission notes that this paragraph does not apply to manufacturing, inasmuch as ''manufacturing'' is not ''construction.'' Moreover, paragraph (b) refers to construction ''on a site on which the facility is to be operated;'' which is not within the scope of a ''manufacturing license'' under subpart F of part 52. Accordingly, manufacturing is not covered by paragraph (b).

Paragraph (c). This paragraph, which is substantially modified from the current rule, addresses the need for, nature and contents of an application for a LWA. Paragraph (c)(1) allows the Commission to issue an LWA in advance of a construction permit or combined license, authorizing the holder to perform certain delineated construction requirements.

Paragraph (c)(2) provides that an LWA application may be submitted as:

—Part of a complete application for a construction permit or combined license under § 2.101(a)(1) through (4).

—Part one of a phased application under § 2.101(a)(9).

—Part of a complete application for an early site permit under § 2.101(a)(1) through (4).

—An amendment to an already-issued early site permit

Paragraph (c)(3) establishes the requirements for the content of an LWA application. The application must include a safety analysis report, an environmental report, and a redress plan. The safety analysis report, which may be a stand-alone document or incorporated into the construction permit or combined license application's preliminary or final safety analysis report, as applicable, must describe the LWA activities that the applicant seeks to perform, provide the final design for the structures to be constructed under the LWA and a safety analysis for those portions of the structure, and provide a safety analysis of the design demonstrating that the activities will be conducted in accordance with applicable Commission safety requirements.

The environmental report must meet the requirements of 10 CFR 51.49, which is discussed in more detail in the section by section analysis for that provision.

The redress plan must describe the activities that would be implemented by the LWA holder, should construction be terminated by the holder, the LWA is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. The primary purpose of the redress plan is to return the site to an environmentally stable and aesthetically acceptable condition that would allow the site to be utilized for alternative, non-nuclear uses that conform with local zoning laws. This will be accomplished through redress of site impacts resulting from LWA activities performed at the site. Redress of site impacts resulting from pre-LWA activities will not be required under the redress plan. In addition, while redress of site impacts may have the practical effect of mitigating some environmental impacts, the redress plan is not a substitute for a thorough evaluation of environmental impacts, or development of mitigation measures that may be necessary to provide relief from environmental impacts associated with the proposed LWA activities.

Paragraph (d). This paragraph, which is substantially modified from the current rule, generally addresses the requirements associated with issuance of a LWA. Paragraph (d)(1) sets forth the requirements for the appropriate Director to issue an LWA under this section. The Director may issue an LWA only after making the appropriate findings on: (i) Necessary technical qualifications, and the matter of foreign ownership or control relevant to the information required by § 50.33(a) through (f), as mandated by sections 103.d. and 182.a. of the AEA; (ii) making the necessary findings on public health and safety and common defense and security with respect to the activities to be carried out under the LWA; (iii) NRC staff issuance of a final EIS on the LWA in accordance with the applicable requirements of part 51; and (iv) the presiding officer finding on the environmental issues relevant to the LWA in accordance with the applicable requirements of part 51, and a finding on the safety issues relevant to the LWA.

Paragraph (d)(2) requires that the LWA specify the activities that the holder is authorized to perform, consistent with the LWA application and as modified based upon the NRC's review. In addition, each LWA will be issued with a condition requiring implementation of the redress plan if the LWA holder terminates construction, the LWA is revoked, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable. As discussed in the analysis of paragraph (e), this condition survives the merging of the LWA into the underlying construction permit, early site permit, or combined license.

Paragraph (e). This paragraph, which is substantially modified from the current rule, addresses the legal effect of an issued LWA. Paragraph (e)(1)

provides that any activities undertaken under a limited work authorization shall be entirely at the risk of the applicant and, with exception of the matters determined under paragraph (c)(4)(ii) and (iii), the issuance of the limited work authorization shall have no bearing on the issuance of a construction permit or combined license with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto. Thus, this paragraph states that the environmental impact statement for a construction permit or combined license application for which a limited work authorization was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of limited work authorization in determining the proposed action (*i.e.*, issuance of the construction permit or combined license).

Paragraph (f). This new paragraph would require the LWA holder to begin implementation of the redress plan in a reasonable time, and complete the redress no later than eighteen (18) months after termination of construction by the holder, revocation of the LWA, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

Part 51

Section 51.4 Definitions

Section 51.4 would be revised by adding a new definition of ''construction,'' which would make applicable throughout part 51 the definition of construction in proposed § 50.10(b). This would have the effect of excluding from an EIS for any early site permit, construction permit, combined license, or LWA issued under § 50.10(c), any discussion, evaluation or consideration of the environmental impacts or benefits associated with non-construction activities as effectively defined in § 50.10(b). This would also remove the need for the NRC decision maker, including a presiding officer, to make a NEPA finding with respect to the environmental impacts or benefits associated with those non-construction activities.

Section 51.17 Information collection requirements; OMB approval

Paragraph (b) of § 51.17 of the March 2006 proposed rule would be further modified by adding a reference to a new § 51.49, which requires submission of an environmental report by LWA applicants. While § 51.49 contains a new information collection requirement, it is not expected to result in a net increase in the burden placed on LWA applicants because the information required under this new section was formerly required to be submitted by such applicants as part of a complete environmental report for the underlying construction permit or combined license under § 51.50, or for the ESP application (or amendment) under Part 52. The primary effect of this supplementary proposed rule would be to delay submission of most of the environmental information to the time that the underlying construction permit or combined license application and environmental report is submitted. Thus, the environmental report submitted under § 51.49 at the LWA stage would be limited in scope to address environmental impacts of LWA activities.

Section 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements

Section 51.20 would be revised by adding a new paragraph (b)(6), explicitly stating that issuance of a LWA under § 50.10 is one of the actions requiring the preparation of an environmental impact statement (or a supplement to environmental impact statement).

Section 51.49 Environmental report-limited work authorization

Section 51.49 is a new section that the Commission proposes to add to part 51, to require the applicant for an LWA to submit an environmental report containing certain specified information. Both paragraph (a), which applies to an applicant requesting a LWA as part of a complete application, and paragraph (b), which applies to an applicant submitting its application in two parts under § 2.101(a)(9), must submit an environmental report which describes the activities proposed to be conducted under the LWA, the need to conduct those activities in advance of the main action, a description of the environmental impacts that may reasonably be expected to result from the conduct of the requested activities, the mitigation measures to be implemented in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting other mitigation measures that could be utilized to further reduce environmental impacts.

Paragraph (c) describes the contents of the environmental report when the request for the LWA is submitted as part of an early site permit application. There is no opportunity for an early site permit holder to submit its application in two parts, with the LWA information submitted in advance of the main early site permit application.

Paragraph (d) describes the contents of the environmental report when the LWA request is submitted by an early site permit holder. In this situation, the environmental report need only contain information on the LWA activities and their environmental impact, and would not include the general information required by § 51.50(b).

Paragraph (e) establishes a limited exception from the information required by paragraphs (a) and (b) to be submitted in an environmental report. For those situations where the LWA is to be conducted at a site: (i) For which the Commission previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, (ii) the construction permit was issued, but (iii) the construction of the plant was never completed, then the applicant's environmental report may reference the earlier environmental impact statement. However, in the event of such referencing, the environmental report must identify whether there is new and significant information relative to the matters required to be addressed in the environmental report with respect to the environmental impacts of the requested LWA activities, as specified in paragraphs (a) or (b).

Paragraph (f) would require, for any application containing a LWA request, that the environmental report must separately evaluate the environmental impacts and proposed alternatives to the activities proposed to be conducted under the limited work authorization. However, at the option of the applicant, the environmental report may also include the information required by § 51.50 to be submitted in the environmental report for the construction permit or combined license application. In those situations, the ''integrated'' environmental report would separately address the total impacts of constructing (including the LWA activities) and operating the proposed facility. This will allow the NRC to prepare in parallel the EIS for the LWA activities and a supplemental EIS for the underlying construction permit or operating license, or a complete EIS at the LWA stage.

Section 51.50 Environmental report-construction permit, early site permit, or combined license stage

Section 51.50 of the March 2006 proposed rule would be modified by deleting in its entirety, proposed paragraph (c)(4), and revising paragraph

(b), to eliminate the requirements for submission of a redress plan by an early site permit applicant. The redress plan would be required under § 50.10(c)(3)(iii).

Section 51.71 Draft environmental impact statement-contents

Section 51.71 would be modified by redesignating the current paragraph (e) as paragraph (f), and a new paragraph (e) would be added to re-emphasize that the draft environmental impact statement for the underlying construction permit or combined license will not address or consider the sunk costs associated with the LWA. Paragraph (e) is consistent with §§ 50.10(c)(6) and 51.71(e).

Section 51.76 Draft environmental impact statement-limited work authorization

Section 51.76 is a new section that the Commission proposes to add to part 51, governing the NRC's preparation of a draft environmental impact statement to support a decision on a LWA. The internal organization of § 51.76 parallels that of § 51.49. Paragraph (a) addresses the EIS to be prepared in connection with a complete application for a construction permit or combined license. This section allows the NRC to prepare either an EIS limited to LWA activities (to be followed by a supplemental EIS on the underlying construction permit or combined license), or a single, complete EIS for the construction permit or combined license. The Commission notes that this paragraph addresses the situation where the application for the construction permit or combined license is complete and includes the request and necessary information for a LWA. Paragraph (b), by contrast, addresses the situation where the LWA request is submitted in advance of the complete application for the construction permit or combined license.

Paragraph (b) applies to an EIS prepared in support of a phased LWA under § 2.101(a)(9). In this situation, if the environmental report submitted in part one is limited to the LWA activities, then the NRC will prepare an EIS limited to the LWA activities. Once part two of the application is received, which includes the environmental report required by § 51.50, the NRC will prepare a supplemental EIS for the construction permit or combined license in accordance with § 51.71, and '' 51.75(a) or (c), as applicable. By contrast, if the environmental report submitted in part one is a complete environmental report required by § 51.50, then the NRC will prepare a single, complete EIS for the construction permit or combined license in accordance with § 51.71, and § 51.75(a) or (c), as applicable.

Paragraph (c) applies to an EIS prepared for issuance of an early site permit which will also include an LWA. The EIS will address the scope of matters required to be addressed under § 51.75(d), which depends upon the matters which the applicant chooses to address in its environmental report, as well as the environmental impacts of conducting the LWA activities requested.

Paragraph (d) addresses the situation where an early site permit holder (as opposed to an applicant) requests a limited work authorization. In this situation, siting and many of the environmental issues have been addressed and resolved in the EIS supporting issuance of the ESP. This paragraph provides for the NRC to prepare a supplemental EIS, addressing the impacts of conducting LWA activities (including any new and significant information that would change the NRC's prior conclusion with respect to those construction activities which would actually be conducted earlier under the LWA instead of a referencing construction permit or combined license), and the adequacy of the proposed redress plan. Other than this updating, the supplemental EIS will not present any updated information on the matters resolved in the ESP EIS.

Paragraph (e) addresses the nature of the EIS prepared for an LWA requested for a site that was approved by the NRC for a plant which was never built. In such cases, the EIS will incorporate by reference the earlier EIS, address whether there is any significant new information with respect to the environmental impacts of construction relevant to the scope of activities to be performed under the LWA, and evaluate any such information in accordance with § 51.71 in determining if the LWA should be issued, or issued with appropriate conditions.

Paragraph (f) indicates that in all cases, the EIS must separately address the impacts of and proposed alternatives to the activities to be conducted under the LWA, in order to ensure that there are specific environmental findings addressing LWA activities for purposes of transparency of the final NRC NEPA findings and decision on the LWA request.

Section 51.103 Record of decision—general

Section 51.103 would be revised by adding a new paragraph (a)(6), which specifies that in a construction permit or combined license proceeding, where an LWA was previously issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the LWA. This provision, which is consistent with §§ 50.10(c)(6) and 51.71(e), is intended to ensure that the Commission's decision whether to issue the construction permit or combined license is not biased in favor of issuance in evaluating the environmental impacts and benefits of the construction permit or combined license.

Section 51.104 NRC proceedings using public hearings, consideration of environmental impact statements or environmental assessment

Section 51.104 would be revised by adding a new paragraph (c) specifying that in an LWA proceeding, a party may only take a position and offer evidence on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention. This paragraph would also specify that the presiding officer will decide the matters in controversy among the parties, *viz.*, the contentions related to the adequacy of the environmental impact statement prepared for the LWA.

Section 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations

Section 51.105 of the March 2006 proposed rule would be modified in two respects. The title of this section would be modified to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. Second, a new paragraph (c) would be added to specify the determinations which must be made by the presiding officer in an LWA hearing associated with either a construction permit or early site permit. Under this new paragraph, the presiding officer would:

—Determine whether the requirements of section 102(2)(A), (C) and (E) of NEPA have been met with respect to the activities to be conducted under the LWA.

—Independently consider the balance among conflicting factors with respect to the LWA.

—In an uncontested proceeding, determine whether the NRC's NEPA review has been adequate.

—In a contested proceeding, determine whether in accordance with the regulations in subpart 51 the LWA should be issued.

Section 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations

Section 51.107 of the March 2006 proposed rule would be modified in two respects. The title of this section would be modified to add a reference to LWAs, reflecting the expanded scope of matters addressed in this section. A new paragraph (d) would also be added to specify the determinations which must be made by the presiding officer in an LWA hearing associated with a combined license. This paragraph is essentially the same as § 51.105(c).

Part 52

Section 52.1 Definitions

A new definition of limited work authorization would be added to § 52.1 of the March 2006 proposed rule, which would be defined as the authorization provided under § 50.10(c). The Commission wishes to clarify that an applicant of an early site permit who requests authority to perform the activities permitted by § 50.10(c), would not, if the request were granted, receive a limited work authorization separate from its early site permit. Instead, the early site permit itself would authorize the activities permitted by § 50.10(c). This regulatory approach is consistent with the current language of § 52.17(c) and 52.25(b). However, once an ESP is issued, the holder could apply for, and would be issued an LWA directly under § 50.10(c).

Section 52.17 Contents of applications; technical information

Paragraph (c) of § 52.17 of the March 2006 proposed rule would be modified by removing the proposed language with respect to limited work authorizations, and instead specify that if the applicant wishes to obtain an LWA, then the information required by § 50.10(c)(2) must be included in the site safety analysis report.

Section 52.24 Issuance of early site permit

This section would be removed from the March 2006 proposed rule. The requirements applicable to the holder of an early site permit with respect to limited work authorization activities are set forth in proposed § 50.10(f).

Section 52.25 Limited Work Authorization After Issuance of Early Site Permit

Section 52.25 is a new section that allows an early site permit holder to request a LWA in accordance with § 50.10.

Section 52.79 Contents of Application; Technical Information in Final Safety Analysis Report

Section 52.79 of the March 2006 proposed rule would be modified by removing the proposed language in paragraph (a)(23) with respect to limited work authorizations. Instead, this paragraph would specify that if the applicant wishes to obtain a LWA, then the applicant must include the information required by § 50.10, either as part of a complete application under § 2.101(a)(1) through (4), or as a phased application under § 2.101(a)(9).

Section 52.80 Content of Applications; Additional Technical Information

Paragraph (c) of § 52.80(c) of the March 2006 proposed rule would be modified to require that a combined license application containing a request for a LWA must contain an environmental report, either: (i) In accordance with 10 CFR 51.50(c) if a limited work authorization under 10 CFR 50.10 is not requested in conjunction with the combined license application; or (ii) in accordance with §§ 51.49 and 51.50(c) of part 51 of this chapter if a limited work authorization is requested in conjunction with the combined license application.

IV. Specific Request for Comments

As explained above, this supplemental proposed rule would impact the types of activities that could be undertaken without prior approval from the NRC, with NRC approval in the form of a LWA, and with NRC approval in the form of a construction permit or combined license.

Therefore, in addition to the general invitation to submit comments on the proposed rule, the NRC also requests comments on the following questions:

1. What types of activities should be permitted without prior NRC approval?
2. What types of activities should be permitted under a LWA?
3. What types of activities should only be permitted after issuance of a construction permit or combined license?

V. Availability of Documents

The NRC is making the documents identified below available to interested persons through one or more of the following methods as indicated.

Public Document Room (PDR). The NRC Public Document Room is located at 11555 Rockville Pike, Rockville, Maryland.

Rulemaking Web site (Web). The NRC's interactive rulemaking Web site is located at *http://ruleforum.llnl.gov*. These documents may be viewed and downloaded electronically via this Web site.

NRC's Public Electronic Reading Room (EPDR). The NRC's electronic public reading room is located at *http://www.nrc.gov/reading-rm.html*.

The NRC staff contact. Geary Mizuno, Mail Stop O–15D21, Washington, DC 20555, 301–415–1639.

Document	PDR	Web	EPDR	NRC Staff
2006/5/25—Comment (4) submitted by Nuclear Energy Institute, Adrian P. Heymer on Proposed Rules	X	X	ML061510471	.....
SECY–98–282, Part 52 Rulemaking Plan	.....	.....	ML032801416	.....
Staff Requirements—SECY–98–282—Part 52 Rulemaking Plan	.....	.....	ML032801439	.....
Regulatory Analysis	X	X	ML062750434	X

VI. Plain Language

The Presidential memorandum dated June 1, 1998, entitled ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). In complying with this directive, the NRC made editorial changes to improve the organization and readability of the existing language of the paragraphs being revised. These types of changes are not discussed further in this document. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be submitted using one of the methods described under the **ADDRESSES** heading of the preamble to this proposed rule.

VII. Agreement State Compatibility

Under the ''Policy Statement on Adequacy and Compatibility of Agreement States Programs,'' approved

by the Commission on June 20, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is classified as compatibility ''NRC'' regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the AEA or provisions of Title 10 of the Code of Federal Regulations, and although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

VIII. Voluntary Consensus Standards (Public Law 104)

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or is otherwise impractical. In this rule, the NRC is proposing to: (i) Redefine the scope of activities constituting ''construction'' for which NRC approval is required; (ii) redefine the scope of activities constituting construction which the NRC may approve in a limited work authorization granted in advance of the issuance of a construction permit or combined license, or which may be conducted by a holder of an early site permit; and (iii) revise the NRC's procedures for granting limited work authorizations. This rulemaking does not establish standards or substantive requirements with which all applicants and licensees must comply. For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR parts 2, 50, 51 and 52.

IX. Environmental Impact—Categorical Exclusion

The NRC has determined that the changes made in this rule fall within the types of actions described in categorical exclusions described in 10 CFR 51.22(c)(1) and (c)(3). Specifically, the conforming changes made to 10 CFR part 2 would qualify for the categorical exclusion described in § 51.22(c)(1). The changes to parts 50, 51 and 52 that describe procedures for filing and reviewing applications for limited work authorizations would qualify for the categorical exclusion described in § 51.22(c)(3)(i). All other changes would qualify for the categorical exemption described in § 51.22(c)(3)(iv).[13] Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation.

X. Paperwork Reduction Act Statement

The proposed rule published on March 13, 2006 imposed new or amended information collection requirements contained in 10 CFR parts 21, 25, 50, 52, and 54 that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These new and amended information collection requirements were submitted to the Office of Management and Budget for review and approval. The existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0044, 3150–0014, 3150–0146, 3150–0018, 3150–0132, 3150–0002, 3150–0055, 3150–0047, and 3150–0039.

This supplement would reduce the proposed rule burden by eliminating the requirement to obtain NRC permission to engage in site preparation activities that do not have a direct impact on radiological health and safety or common defense and security at sites where new nuclear power plants are to be constructed. Specifically, the burden associated with the preparation of applications for permission to engage in these activities, as well as the burden of responding to requests for additional information associated with these applications, would be eliminated by the supplement. The burden reduction for information collections contained in 10 CFR part 52 (OMB approval number 3150–0151), is estimated to be 50 hours per application. The burden reduction associated with this proposed rule supplement will be included in the revised OMB clearance package prepared for the final rule.

This supplement also contains a new information collection requirement in § 51.49, however this new information collection is not expected to result in a net increase in the burden for LWA applicants because the information to be submitted under this new requirement was formerly submitted by such applicants as part of a complete environmental report for the underlying construction permit or combined license under § 51.50, or for the ESP application (or amendment) under part 52. The primary effect of the new information collection requirement in part 51 of the supplemental proposed rule would be to delay submission of most of the environmental information to the time that the underlying construction permit or combined license application and environmental report is submitted. Thus, changes in burden for information collections contained in 10 CFR part 51 (OMB approval number 3150–0021) are expected to be minimal.

The U.S. Nuclear Regulatory Commission is seeking public comment on the potential impact of the information collections contained in the proposed rule supplement and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC, including whether the information will have practical utility?

2. Is the estimate of burden accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques?

Send comments on any aspect of this proposed information collection, including suggestions for reducing the burden and on the above issues, by December 18, 2006 to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV* and to the Desk Officer, John A. Asalone, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0021, 3150–0151), Office of Management and Budget, Washington, DC 20503. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. You may also e-mail comments to *John_A._Asalone@omb.eop.gov* or comment by telephone at (202) 395–4650.

[13] Although the industry's request came in the form of a comment on the proposed Part 52 rule (71 FR 12782; March 13, 2006), the comment letter stated; ''To the extent the NRC determines that these LWA issues cannot be addressed in the current rulemaking, we ask that the Commission initiate an expedited rulemaking.'' The NRC has determined that the changes suggested by the industry in Comment 4 (docketed on May 30, 2006, 4:50 PM) could not be incorporated into the final Part 52 rule without re-noticing. Therefore, the Commission has decided to treat the comments submitted by the industry as a petition for expedited rulemaking and is publishing this supplemental proposed rule for public comment. The NRC has determined that Comment 4 meets the sufficiency requirements described in 10 CFR 2.802(c) and that it is appropriate to seek public comment on the petition by publishing this proposed rule developed in response to the petition, as allowed under 10 CFR 2.802(e).

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

XI. Regulatory Analysis

The commission has prepared a draft regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The Commission requests public comment on the draft regulatory analysis. Availability of the regulatory analysis is provided in Section V. Comments on the draft analysis may be submitted to the NRC as indicated under the **ADDRESSES** heading.

XII. Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the licensing of nuclear power plants. The companies that will apply for an approval, certification, permit, site report, or license in accordance with the regulations affected by this proposed rule do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

XIII. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule and, therefore, a backfit analysis is not required, because the proposed rule does not contain any provisions that would impose backfitting as defined in the backfit rule, 10 CFR 50.109.

There are no current holders of early site permits, construction permits, or combined licenses for nuclear power plants that would be protected by the backfitting restrictions in § 50.109. To the extent that the proposed rule would revise the requirements for future early site permits, construction permits, or combined licenses for nuclear power plants, these revisions would not constitute backfits because they are prospective in nature and the backfit rule was not intended to apply to every NRC action which substantially changes the expectations of future applicants.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Emergency Planning, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site permit, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

For the reasons set forth in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 2, 50, 51 and 52.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

1. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)), sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Sections 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, I, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201 (b), (I), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133), and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

2. In § 2.101, paragraphs (a)(1) and (a)(2) are revised, the introductory text of paragraph (a)(3) is revised, paragraph (a)(3)(ii) is revised, paragraph (a)(4) is revised, paragraphs (a)(6) through (a)(8) are added and reserved, and a paragraph (a)(9) is added to read as follows:

§ 2.101 Filing of application.

(a)(1) An application for a permit, a license, a license transfer, a license amendment, a license renewal, and a standard design approval, shall be filed with the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as prescribed by the applicable provisions of this chapter. A prospective applicant may confer informally with the NRC staff before filing an application.

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public

inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of 30 days. However, in selected applications, the Commission may decide to determine acceptability based on the technical adequacy of the application as well as its completeness. In these cases, the Commission, under § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of 60 days. For docketing and other requirements for applications under part 61 of this chapter, see paragraph (g) of this section.

(3) If the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, determines that a tendered application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license for a production or utilization facility, and/or any environmental report required under subpart A of part 51 of this chapter, or part thereof as provided in paragraphs (a)(5) or (a–1) of this section are complete and acceptable for docketing, a docket number will be assigned to the application or part thereof, and the applicant will be notified of the determination. With respect to the tendered application and/or environmental report or part thereof that is acceptable for docketing, the applicant will be requested to:

* * * * *

(ii) Serve a copy on the chief executive of the municipality in which the facility or site which is the subject of an early site permit is to be located or, if the facility or site which is the subject of an early site permit is not to be located within a municipality, on the chief executive of the county, and serve a notice of availability of the application or environmental report on the chief executives of the municipalities or counties which have been identified in the application or environmental report as the location of all or part of the alternative sites, containing the following information, as applicable: Docket number of the application, a brief description of the proposed site and facility; the location of the site and facility as primarily proposed and alternatively listed; the name, address, telephone number, and e-mail address (if available) of the applicant's representative who may be contacted for further information; notification that a draft environmental impact statement will be issued by the Commission and will be made available upon request to the Commission; and notification that if a request is received from the appropriate chief executive, the applicant will transmit a copy of the application and environmental report, and any changes to these documents which affect the alternative site location, to the executive who makes the request. In complying with the requirements of this paragraph, the applicant should not make public distribution of those parts of the application subject to § 2.390(d). The applicant shall submit to the Director of Nuclear Reactor Regulation an affidavit that service of the notice of availability of the application or environmental report has been completed along with a list of names and addresses of those executives upon whom the notice was served; and

* * * * *

(4) The tendered application for a construction permit, operating license, early site permit, standard design approval, combined license, or manufacturing license will be formally docketed upon receipt by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, of the required additional copies. Distribution of the additional copies shall be deemed to be complete as of the time the copies are deposited in the mail or with a carrier prepaid for delivery to the designated addresses. The date of docketing shall be the date when the required copies are received by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Within 10 days after docketing, the applicant shall submit to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, an affidavit that distribution of the additional copies to Federal, State, and local officials has been completed in accordance with the requirements of this chapter and written instructions furnished to the applicant by the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate. Amendments to the application and environmental report shall be filed and distributed and an affidavit shall be furnished to the Director of Nuclear Reactor Regulation or Director of Nuclear Material Safety and Safeguards, as appropriate, in the same manner as for the initial application and environmental report. If it is determined that all or any part of the tendered application and/or environmental report is incomplete and therefore not acceptable for processing, the applicant will be informed of this determination, and the respects in which the document is deficient.

* * * * *

(6)–(8) Reserved.

(9) *Limited work authorization.* An applicant for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, an applicant for or holder of an early site permit under part 52 of this chapter, or an applicant for a combined license under part 52 of this chapter, who seeks to conduct the activities authorized under § 50.10(c) of this chapter may submit a complete application under paragraphs (a)(1)–(4) of this section which includes the information required by § 50.10(c) of this chapter. Alternatively, the applicant (other than a holder of an early site permit) may submit its application in two parts:

(i) Part one must include the information required by § 50.33(a) through (f) of this chapter, and the information required by § 50.10(c)(2) and (3) of this chapter.

(ii) Part two must include the remaining information required by the Commission's regulations in this chapter which was not submitted in part one, *provided, however,* that this information may be submitted in accordance with the applicable provisions of paragraph (a–1) of this section.

(iii) Part two of the application must be submitted no later than twelve (12) months after submission of part one.

* * * * *

3. In § 2.104, the introductory text of paragraph (a) is revised, current paragraphs (d) and (e) are redesignated as paragraphs (l) and (m), respectively, and revised, new paragraphs (d), (e), and (f) are added, and paragraphs (g) through (k) are added and reserved, and footnote 1 is revised to read as follows:

§ 2.104 Notice of hearing.

(a) In the case of an application on which a hearing is required by the Act or this chapter, or in which the Commission finds that a hearing is required in the public interest, the Secretary will issue a notice of hearing to be published in the **Federal Register** as required by law at least 15 days, and in the case of an application concerning a construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility, at least

30 days, before the date set for hearing in the notice.[1] In addition, in the case of an application for an early site permit, construction permit or combined license for a facility of the type described in § 50.22 of this chapter, or a testing facility, the notice (other than a notice under paragraph (d) of this section) must be issued as soon as practicable after the application has been docketed. However, if the Commission, under § 2.101(a)(2), decides to determine the acceptability of the application based on its technical adequacy as well as completeness, the notice must be issued as soon as practicable after the application has been tendered. The notice will state:

* * * * *

(d) In the case of an application for an early site permit under subpart A of part 52 of this chapter, the notice of hearing will state, in implementation of paragraph (a)(3) of this section:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether any required notifications to other agencies or bodies have been duly made;

(iii) If the applicant requests, under § 52.17(c) of this chapter, a limited work authorization under § 50.10 of this chapter, whether there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type described in the application from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission;

(iv) Whether there is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(v) Whether the applicant is technically qualified to engage in any activities authorized;

(vi) Whether the proposed inspections, tests, analyses and acceptance criteria, including any on emergency planning, are necessary and sufficient within the scope of the early site permit to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vii) Whether issuance of the early site permit will be inimical to the common defense and security or to the health and safety of the public; and

(viii) Whether, in accordance with the requirements of subpart A of part 52 of this chapter and subpart A of part 51 of this chapter, the early site permit should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a *de novo* evaluation of the application, whether:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (d)(1)(i) through (v) and (viii) of this section, and a negative finding on paragraph (d)(1)(vii) of this section; and

(ii) The review conducted under part 51 of this chapter under the National Environmental Policy Act (NEPA) has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the NEPA and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) If the applicant requests authorization to perform the activities under § 52.17(c) of this chapter, whether there is reasonable assurance that the proposed site is a suitable location for a reactor of the general size and type described in the application from the standpoint of radiological health and safety considerations under the Act and regulations issued by the Commission.

(iv) Determine whether the combined license should be issued, denied or appropriately conditioned to protect environmental values.

(e) In the case of an application for a combined license under subpart C of part 52 of this chapter, the notice of hearing will state, in implementation of paragraph (a)(3) of this section:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether any required notifications to other agencies or bodies have been duly made;

(iii) Whether there is reasonable assurance that the facility will be constructed and will operate in conformity with the license, the provisions of the Act, and the Commission's regulations;

(iv) Whether the applicant is technically and financially qualified to engage in the activities authorized;

(v) Whether the proposed inspections, tests, analyses, and acceptance criteria, including those applicable to emergency planning, are necessary and sufficient to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vi) Whether any inspections, tests, or analyses have been successfully completed and the acceptance criteria in a referenced early site permit, standard design certification or for a manufactured reactor have been met, but only to the extent that the combined license application represents that those inspections, tests and analyses have been successfully completed and the acceptance criteria have been met;

(vii) Whether the issuance of the combined license will be inimical to the common defense and security or to the health and safety of the public; and

(viii) Whether, in accordance with the requirements of subpart C of part 52 of this chapter and subpart A of part 51 of this chapter, the combined license should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a de novo evaluation of the application, if:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (e)(1)(i) through (vii) and (e)(1)(ix) of this section, and a negative finding on paragraph (e)(1)(viii) of this section; and

(ii) The review conducted under part 51 of this chapter under NEPA has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

[1] If the notice of hearing concerning an application for a construction permit, early site permit, or combined license for a facility of the type described in § 50.21(b) or § 50.22 of this chapter or a testing facility does not specify the time and place of initial hearing, a subsequent notice will be published in the **Federal Register** which will provide at least 30 days notice of the time and place of that hearing. After this notice is given the presiding officer may reschedule the commencement of the initial hearing for a later date or reconvene a recessed hearing without again providing at least 30 days notice.

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the NEPA and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) Determine whether the combined license should be issued, denied or appropriately conditioned to protect environmental values.

(f) In the case of an application for a manufacturing license under subpart F of part 52 of this chapter, the issues stated in the notice of hearing under paragraph (a)(3) of this section will not involve consideration of the particular sites at which any of the nuclear power reactors to be manufactured may be located and operated. Unless the Commission determines otherwise, the notice of hearing will state:

(1) If the proceeding is a contested proceeding, the presiding officer will consider the following issues:

(i) Whether applicable standards and requirements of the Act and the Commission's regulations have been met;

(ii) Whether there is reasonable assurance that the reactor(s) will be manufactured, and can be transported, incorporated into a nuclear power plant, and operated in conformity with the manufacturing license, the provisions of the Act, and the Commission's regulations;

(iii) Whether the proposed reactor(s) to be manufactured can be incorporated into a nuclear power plant at sites having characteristics that fall within the site parameters postulated for the design of the manufactured reactor(s) without undue risk to the health and safety of the public;

(iv) Whether the applicant is technically qualified to design and manufacture the proposed nuclear power reactor(s);

(v) Whether the proposed inspections, tests, analyses, and acceptance criteria are necessary and sufficient, within the scope of the manufacturing license, to provide reasonable assurance that the reactor has been manufactured and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(vi) Whether the issuance of a license for manufacture of the reactor(s) will be inimical to the common defense and security or to the health and safety of the public; and

(vii) Whether, in accordance with the requirements of subpart F of part 52 and subpart A of part 51 of this chapter, the license should be issued as proposed.

(2) If the proceeding is not a contested proceeding, the presiding officer will determine, without conducting a *de novo* evaluation of the application, whether:

(i) The application and the record of the proceeding contain sufficient information, and the review of the application by the NRC staff has been adequate to support affirmative findings on paragraphs (f)(1)(i) through (v) and (f)(1)(vii) of this section proposed to be made and a negative finding on paragraph (f)(1)(vi) of this section; and

(ii) The review conducted under part 51 of this chapter under NEPA has been adequate.

(3) Regardless of whether the proceeding is contested or uncontested, the presiding officer will, in accordance with subpart A of part 51 of this chapter:

(i) Determine whether the requirements of section 102(2) (A), (C), and (E) of the National Environmental Policy Act and subpart A of part 51 of this chapter have been complied with in the proceeding;

(ii) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determine the appropriate action to be taken; and

(iii) Determine whether the manufacturing license should be issued, denied or appropriately conditioned to protect environmental values.

(4) The place of hearing on an application for a manufacturing license will be Rockville, Maryland, or such other location as the Commission deems appropriate.

(g)–(k) Reserved

(l) In an application for a construction permit or an operating license for a facility on which a hearing is required by the Act or this chapter, the notice of hearing will, unless the Commission determines otherwise, state:

(1) A time of the hearing, which will be as soon as practicable after compliance with section 189a of the Act and this part;

(2) The presiding officer for the hearing who shall be either an administrative law judge or an atomic safety and licensing board established by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel; and

(3) That matters of radiological health and safety and common defense and security, and matters raised under NEPA, will be considered at another hearing if otherwise required or ordered to be held, for which a notice will be published under paragraphs (a) and (b) of this section, unless otherwise authorized by the Commission.

(m)(1) The Secretary will transmit a notice of hearing on an application for a license for a production or utilization facility including an early site permit, combined license (but not for a manufacturing license), for a license for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee, for a license under part 61 of this chapter, for a construction authorization for a HLW repository at a geologic repository operations area under parts 60 or 63 of this chapter, for a license to receive and possess high-level radioactive waste at a geologic repository operations area under parts 60 or 63 of this chapter, and for a license under part 72 of this chapter to acquire, receive or possess spent fuel for the purpose of storage in an independent spent fuel storage installation (ISFSI) to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

(2) The Secretary will transmit a notice of opportunity for hearing under § 52.103 of this chapter on whether the facility as constructed complies, or on completion will comply, with the acceptance criteria in the combined license, except for those ITAAC that the Commission found were met under § 52.97 of this chapter, to the governor or other appropriate official of the State and to the chief executive of the municipality in which the facility is to be located or the activity is to be conducted or, if the facility is not to be located or the activity conducted within a municipality, to the chief executive of the county (or to the Tribal organization, if it is to be located or conducted within an Indian reservation).

(3) The Secretary will transmit a notice of hearing on an application for a license under part 72 of this chapter to acquire, receive or possess spent fuel, high-level radioactive waste or radioactive material associated with high-level radioactive waste for the purpose of storage in a monitored retrievable storage installation (MRS) to the same persons who received the notice of docketing under § 72.16(e) of this chapter.

4. The heading of subpart F is revised to read as follows:

Subpart F—Additional Procedures Applicable to Early Partial Decisions on Site Suitability Issues in Connection With an Application for a Construction Permit or Combined License To Construct Certain Utilization Facilities; and Advance Issuance of Limited Work Authorizations

5. Section 2.600 is revised to read as follows:

§ 2.600 Scope of Subpart.

This subpart prescribes procedures applicable to licensing proceedings which involve an early submittal of site suitability information in accordance with § 2.101(a–1), and a hearing and early partial decision on issues of site suitability, in connection with an application for a permit to construct a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or is a testing facility. This subpart also prescribes procedures applicable to proceedings for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b)(2) or (3) or § 50.22 of this chapter, or an applicant for a combined license under part 52 of this chapter, who seeks to conduct the activities authorized under § 50.10(c) of part 50 of this chapter in advance of issuance of the construction permit or combined license, and submits an application in accordance with § 2.101(a)(9).

6. Section 2.601 is revised to read as follows:

§ 2.601 Applicability of other sections.

The provisions of subparts A, C, G, L and N of this part relating to applications for construction permits and proceedings thereon apply, respectively, to applications and proceedings in accordance with this subpart, except as specifically provided otherwise by the provisions of this subpart.

7. Preceding § 2.602, an undesignated center heading is added to read as follows:

Early Partial Decisions on Site Suitability

8. In § 2.606, paragraph (a) is revised to read as follows:

§ 2.606 Partial decision on site suitability issues.

(a) The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. No construction permit may be issued without completion of the full review required by section 102(2) of the National Environmental Policy Act of 1969, as amended, and subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit.

* * * * *

9. Following § 2.606, an undesignated center heading and §§ 2.641 through 2.649 are added to read as follows:

Phased Applications Involving Limited Work Authorizations

Sec.
2.641 Filing Fees.
2.643 Acceptance and docketing of applications for limited work authorization.
2.645 Notice of hearing.
2.647 [Reserved]
2.649 Partial decisions on limited work authorization.

§ 2.641 Filing fees.

Each application which contains a request for limited work authorization under the procedures of § 2.101(a)(9) and this subpart shall be accompanied by any fee required by § 50.30(e) and part 170 of this chapter.

§ 2.643 Acceptance and docketing of application for limited work authorization.

(a) Each part of an application submitted in accordance with § 2.101(a)(9) will be initially treated as a tendered application. If it is determined that any one of the parts as described in § 2.101(a)(9) is incomplete and not acceptable for processing, the Director of Nuclear Reactor Regulation will inform the applicant of this determination and the respects in which the document is deficient. A determination of completeness will generally be made within a period of thirty (30) days.

(b) The Director will accept for docketing part one of an application for a construction permit for a utilization facility which is subject to § 51.20(b) of this chapter and is of the type specified in § 50.21(b) (2) or (3) or § 50.22 of this chapter or an application for a combined license where part one of the application as described in § 2.101(a)(9) is complete. Part one will not be considered complete unless it contains the information required by § 50.10(c) of this chapter. Upon assignment of a docket number, the procedures in § 2.101(a)(3) and (4) relating to formal docketing and the submission and distribution of additional copies of the application must be followed.

(c) If part one of the application is docketed, the Director will cause to be published in the **Federal Register** and send to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of the application which states the purpose of the application, states the location of the proposed site, states that a notice of hearing will be published, and requests comments on the limited work authorization from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

(d) Part two of the application will be docketed upon a determination by the Director that it is complete.

(e) If part two of the application is docketed, the Director will cause to be published in the **Federal Register** and sent to the Governor or other appropriate official of the State in which the site is located, a notice of docketing of part two of the application which states the purpose of the application, states that a notice of hearing will be published, and requests comments on the construction permit or combined license application, as applicable, from Federal, State, and local agencies and interested persons. The notice will state that comments must be submitted to the NRC within 60 days or such other time as may be specified in the notice.

2.645 Notice of hearing.

(a) The notice of hearing on part one of the application must set forth the matters of fact and law to be considered, as required by § 2.104, which will be modified to state that the hearing will relate only to the matters related to § 50.33(a) through (f) of this chapter, and the limited work authorization.

(b) After docketing of part two of the application, as provided in §§ 2.101(a)(9) and 2.643(d), a supplementary notice of hearing will be published under § 2.104 with respect to the remaining unresolved issues in the proceeding within the scope of § 2.104. The supplementary notice of hearing will provide that any person whose interest may be affected by the proceeding and who desires to participate as a party in the resolution of the remaining issues shall file a petition for leave to intervene within the time prescribed in the notice. The petition to intervene must meet the applicable requirements in subpart C of part 2 of this chapter, including § 2.309.

This supplementary notice will also provide appropriate opportunities for participation by a representative of an interested State under § 2.315(c) and for limited appearances under § 2.315(a).

(c) Any person who was permitted to intervene under the initial notice of hearing on the limited work authorization and who was not dismissed or did not withdraw as a party, may continue to participate as a party with respect to the remaining unresolved issues only if, within the time prescribed for filing of petitions for leave to intervene in the supplementary notice of hearing, that person files a petition for intervention which meets the applicable requirements in subpart C of part 2, including § 2.309, *provided, however,* that the petition need not address § 2.309(d). However, a person who was granted discretionary intervention under § 2.309(e) must address in its petition the factors in § 2..309(e) as they apply to the supplementary hearing.

(d) A party who files a non-timely petition for intervention under subsection (c) of this section to continue as a party may be dismissed from the proceeding, absent a determination that the party has made a substantial showing of good cause for failure to file on time, and with particular reference to the factors specified in §§ 2.309(c)(1)(i) through (iv) and 2.309(d). The notice will be ruled upon by the Commission or presiding officer designated to rule on petitions for leave to intervene.

(e) To the maximum extent practicable, the membership of the atomic safety and licensing board, or the individual presiding officer, as applicable, designated to preside in the proceeding on the remaining unresolved issues pursuant to the supplemental notice of hearing will be the same as the membership or individual designated to preside in the initial notice of hearing.

§ 2.647 [Reserved].

§ 2.649 Partial decisions on limited work authorization.

The provisions of §§ 2.331, 2.339, 2.340(b), 2.343, 2.712, and 2.713 apply to any partial initial decision rendered in accordance with this subpart. Section 2.340(c) does not apply to any partial initial decision rendered in accordance with this subpart. A limited work authorization may not be issued under 10 CFR 50.10(c) without completion of the review for limited work authorizations required by subpart A of part 51 of this chapter. The authority of the Commission to review such a partial initial decision sua sponte, or to raise sua sponte an issue that has not been raised by the parties, will be exercised within the same time period as in the case of a full decision relating to the issuance of a construction permit or combined license.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

10. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5841). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

11. Section 50.10 is revised to read as follows:

§ 50.10 License required; limited work authorization.

(a) *Requirement for license.* Except as provided in § 50.11, no person within the United States shall transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, or use any production or utilization facility except as authorized by a license issued by the Commission.

(b) *Requirement for construction permit, early site permit, combined license, or limited work authorization.* No person may begin the construction of a production or utilization facility on a site on which the facility is to be operated until that person has been issued either a construction permit under this part or a combined license under part 52 of this chapter, or a limited work authorization under paragraph (c) of this section. As used in this paragraph, the term ''construction'' includes excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report. The term ''construction'' excludes:

(1) Changes for the temporary use of the land for public recreational purposes;

(2) Site exploration, including: necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Construction of fencing and other access control measures;

(5) Construction of temporary construction support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings and offices) for use in connection with the construction of the facility;

(6) Construction of permanent service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, transmission lines, support buildings, and office buildings;

(7) Procurement or manufacture of the components of the proposed facility, or the manufacture of a nuclear power reactor under a manufacturing license under subpart F of this part to be installed at the proposed site and be part of the proposed facility; and

(8) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed pursuant to section 104.a or section 104.c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (for example, the construction of a college laboratory building with space for installation of a training reactor).

(c) *Request for limited work authorization.* (1) Any person to whom the Commission may otherwise issue

either a license or permit under Sections 103, 104.b, or 185 of the Act for a facility of the type specified in § 50.21(b)(2) or (3), § 50.22, or a testing facility, may request a limited work authorization allowing that person to perform excavation, subsurface preparation, including the driving of piles, and installation of the foundation, including placement of concrete, for any structure, system or component of the facility.

(2) An application for a limited work authorization may be submitted as part of a complete application for a construction permit or combined license in accordance with 10 CFR 2.101(a)(1) through (4), or as a partial application in accordance with 10 CFR 2.101(a)(9). An application for a limited work authorization must be submitted by an applicant for or holder of an early site permit as a complete application in accordance with 10 CFR 2.101(a)(1) through (4).

(3) The application must include:

(i) A safety analysis report required by 10 CFR 50.34, 10 CFR 52.17 or 10 CFR 52.79, as applicable, a description of the activities requested to be performed, and the design and construction information otherwise required by the Commission's rules and regulations to be submitted for a construction permit or combined license, but limited to those portions of the facility that are within the scope of the limited work authorization. The safety analysis report must demonstrate that activities conducted under the limited work authorization will be conducted in compliance with the technically-relevant Commission requirements in 10 CFR Chapter I applicable to the design of those portions of the facility within the scope of the limited work authorization;

(ii) An environmental report in accordance with § 51.49 of this chapter; and

(iii) A plan for redress of the site to achieve an environmentally stable and aesthetically acceptable site suitable for whatever non-nuclear use may conform with local zoning laws, should limited work activities be terminated by the holder, the limited work authorization is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated construction permit or combined license application, as applicable.

(d) *Issuance of limited work authorization.* (1) The Director of the Office of Nuclear Reactor Regulation may issue a limited work authorization only after:

(i) The NRC staff issues the final environmental impact statement for the limited work authorization in accordance with subpart A of part 51 of this chapter;

(ii) The presiding officer makes the finding in § 51.105(c) or § 51.107(d) of this chapter, as applicable;

(iii) The Director determines that the applicable standards and requirements of the Act and the Commission's regulations applicable to the activities to be conducted under the limited work authorization have been met; the applicant is technically qualified to engage in the activities authorized; and issuance of the limited work authorization will provide reasonable assurance of adequate protection to public health and safety and will not be inimical to the common defense and security; and

(iv) The presiding officer finds that there are no unresolved safety issues relating to the activities to be conducted under the limited work authorization that would constitute good cause for withholding the authorization.

(2) Each limited work authorization will specify the activities that the holder is authorized to perform. The limited work authorization will include a condition requiring the holder to redress the site in accordance with the redress plan required by § 52.17(c) of this chapter, if construction is terminated by the holder, the LWA is revoked by the NRC, or upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

(e) *Effect of limited work authorization.* Any activities undertaken under a limited work authorization are entirely at the risk of the applicant and, except as to the matters determined under paragraph (d)(1) of this section, the issuance of the limited work authorization has no bearing on the issuance of a construction permit or combined license with respect to the requirements of the Act, and rules, regulations, or orders promulgated pursuant thereto. The environmental impact statement for a construction permit or combined license application for which a limited work authorization was previously issued will not address, and the presiding officer will not consider, the sunk costs of the holder of limited work authorization in determining the proposed action (i.e., issuance of the construction permit or combined license).

(f) *Implementation of redress plan.* If construction is terminated by the holder, the underlying application is withdrawn by the applicant or denied by the NRC, or the LWA is revoked by the NRC, then the holder must begin implementation of the redress plan in a reasonable time, and complete the redress of the site no later than eighteen (18) months after termination of construction, revocation of the LWA, upon effectiveness of the Commission's final decision denying the associated operating license application or the underlying combined license application, as applicable.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

12. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

13. In § 51.4, a new definition of construction is added to read as follows:

§ 51.4 Definitions.

* * * * *

Construction includes excavation, subsurface preparation, including the driving of piles, installation of the foundation, including the placement of concrete, and on-site, in-place fabrication, erection, integration or testing, for any structure, system or component of a facility required by the Commission's rules and regulations to be described in the site safety analysis report or preliminary or final safety analysis report. The term ''construction'' excludes:

(1) Changes for the temporary use of the land for public recreational purposes;

(2) Site exploration, including: Necessary borings to determine foundation conditions or other preconstruction monitoring to establish background information related to the suitability of the site, the environmental

impacts of construction or operation, or the protection of environmental values;

(3) Preparation of the site for construction of a facility, including clearing of the site, grading, installation of drainage, erosion and other environmental mitigation measures, and construction of temporary roads and borrow areas;

(4) Construction of fencing and other access control measures;

(5) Construction of temporary construction support buildings (such as construction equipment storage sheds, warehouse and shop facilities, utilities, concrete mixing plants, docking and unloading facilities, and construction support buildings and offices) for use in connection with the construction of the facility;

(6) Construction of permanent service facilities, such as paved roads, parking lots, railroad spurs, exterior utility and lighting systems, potable water systems, sanitary sewerage treatment facilities, transmission lines, support buildings, and office buildings;

(7) Procurement or manufacture of the components of the proposed facility, or the manufacture of a nuclear power reactor under a manufacturing license under subpart F of this part to be installed at the proposed site and be part of the proposed facility; and

(8) With respect to production or utilization facilities, other than testing facilities and nuclear power plants, required to be licensed pursuant to section 104.a or section 104.c of the Act, the construction of buildings which will be used for activities other than operation of a facility and which may also be used to house a facility (for example, the construction of a college laboratory building with space for installation of a training reactor).

14. In § 51.17, paragraph (b) is revised to read as follows:

§ 51.17 Information collection requirements; OMB approval.

* * * * *

(b) The approved information collection requirements in this part appear in §§ 51.6, 51.16, 51.41, 51.45, 51.49, 51.50, 51.51, 51.52, 51.53, 51.54, 51.58, 51.60, 51.61, 51.62, 51.66, 51.68, and 51.69.

15. In § 51.20, the introductory text of paragraph (b) is republished and a new paragraph (b)(5) is added to read as follows:

§ 51.20 Criteria for and identification of licensing and regulatory actions requiring environmental impact statements.

* * * * *

(b) The following types of actions require an environmental impact statement or a supplement to an environmental impact statement:

* * * * *

(5) Issuance of a limited work authorization under 10 CFR 50.10 of the chapter.

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16. A new § 51.49 is added under the heading Environmental Reports—Production and Utilization Facilities to read as follows:

§ 51.49 Environmental report—limited work authorization.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application.* Each applicant for construction permit or combined license who applies for a limited work authorization under § 50.10(c) of part 50 of this chapter in a complete application under 10 CFR 2.101(a)(1) through (4), shall submit with its application a separate document, entitled, ''Applicant's Environmental Report—Limited Work Authorization Stage,'' which is in addition to the Environmental Report required by § 51.50 of this section. The Applicant's Environmental Report—Limited Work Authorization Stage must contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(b) *Phased application for limited work authorization and construction permit or combined license.* If the construction permit or combined license application is filed in accordance with § 2.101(a)(9) of this chapter, then the environmental report for part one of the application may be limited to a discussion of the activities proposed to be conducted under the limited work authorization, and the proposed redress plan. If the scope of the environmental report for part one is so limited, then part two of the application must include the information required by § 51.50, as applicable.

(c) *Limited work authorization submitted as part of early site permit application.* Each applicant for an early site permit under subpart A of part 51 who is requesting a limited work authorization shall submit with its application the environmental report required by § 51.50(b), provided, however, that the report must also contain the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities; and

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts.

(d) *Limited work authorization request submitted by early site permit holder.* Each holder of an early site permit who requests a limited work authorization shall submit with its application the environmental report containing the following information:

(1) A description of the activities proposed to be conducted under the limited work authorization;

(2) A statement of the need for the activities;

(3) A description of the environmental impacts that may reasonably be expected to result from the activities, the mitigation measures that the applicant proposes to implement in order to achieve the level of environmental impacts described, and a discussion of the reasons for rejecting mitigation measures that could be employed by the applicant to further reduce environmental impacts; and

(4) A discussion of any new and significant information on the environmental impacts of construction as determined in the environmental impact statement for the early site permit, which may materially affect the conclusions of the early site permit with respect to the environmental impacts of the activities to be conducted under the limited work authorization.

(e) *Limited work authorization for site where EIS was prepared, but the facility was not constructed.* If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then the applicant's environmental report may reference the earlier environmental impact statement. In the event of such

referencing, the environmental report must identify whether there is new and significant information material to the matters required to be addressed in paragraph (a) of this section.

(f) *Environmental Report.* An environmental report submitted in accordance with this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. At the option of the applicant, the Applicant's Environmental Report—Limited Work Authorization Stage may contain the information required to be submitted in the environmental report required under § 51.50, which addresses the impacts of construction and operation for the proposed facility (including the environmental impacts attributable to the limited work authorization), and discusses the overall costs and benefits balancing for the proposed action.

17. Section 51.50 is revised to read as follows:

§ 51.50 Environmental report—construction permit, early site permit, or combined license stage.

(a) *Construction permit stage.* Each applicant for a permit to construct a production or utilization facility covered by § 51.20 shall submit with its application a separate document, entitled ''Applicant's Environmental Report—Construction Permit Stage,'' which shall contain the information specified in §§ 51.45, 51.51 and 51.52. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

(b) *Early site permit stage.* Each applicant for an early site permit shall submit with its application a separate document, entitled ''Applicant's Environmental Report—Early Site Permit Stage,'' which shall contain the information specified in §§ 51.45, 51.51, and 51.52, as modified in this paragraph. Environmental reports need not include an assessment of the economic, technical, and other benefits and costs of the proposed action or an analysis of other energy alternatives. Environmental reports must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters. Environmental reports must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed. For other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter.

(c) *Combined license stage.* Each applicant for a combined license shall submit with its application a separate document, entitled ''Applicant's Environmental Report—Combined License Stage.'' Each environmental report shall contain the information specified in §§ 51.45, 51.51 and 51.52, for other than light-water-cooled nuclear power reactors, the environmental report shall contain the basis for evaluating the contribution of the environmental effects of fuel cycle activities for the nuclear power reactor. Each environmental report shall identify procedures for reporting and keeping records of environmental data, and any conditions and monitoring requirements for protecting the non-aquatic environment, proposed for possible inclusion in the license as environmental conditions in accordance with § 50.36b of this chapter. The combined license environmental report may reference information contained in a final environmental document previously prepared by the NRC staff.

(1) *Application referencing an early site permit.* The applicant must have a reasonable process for identifying any new and significant information regarding the NRC's conclusions in the early site permit environmental impact statement. If the combined license application references an early site permit, then the ''Applicant's Environmental Report—Combined License Stage'' need not contain information or analyses submitted to the Commission in ''Applicant's Environmental Report—Early Site Permit Stage,'' but must contain, in addition to the environmental information and analyses otherwise required:

(i) Information to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit;

(ii) Information to resolve any other significant environmental issue not considered in the early site permit proceeding, either for the site or design; and

(iii) Any new and significant information on the site or design to the extent that it differs from, or is in addition to, that discussed in the early site permit environmental impact statement.

(2) *Application referencing standard design certification.* If the combined license references a standard design certification, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the referenced design certification. If the design certification environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the design certification environmental assessment.

(3) *Application referencing a manufactured reactor.* If the combined license application proposes to use a manufactured reactor, then the combined license environmental report may incorporate by reference the environmental assessment previously prepared by the NRC for the underlying manufacturing license. If the manufacturing license environmental assessment is referenced, then the combined license environmental report must contain information to demonstrate that the site characteristics for the combined license site fall within the site parameters in the manufacturing license environmental assessment. The environmental report need not address the environmental impacts associated with manufacturing the reactor under the manufacturing license.

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18. In § 51.71, paragraph (d) and footnote 3 are revised, paragraph (e) is redesignated as paragraph (f), and a new paragraph (e) is added to read as follows:

§ 51.71 Draft environmental impact statement-contents.

* * * * *

(d) *Analysis.* (1) Unless excepted in this paragraph, the draft environmental impact statement will include a preliminary analysis that considers and weighs the environmental effects of the proposed action; the environmental impacts of alternatives to the proposed action; and alternatives available for reducing or avoiding adverse environmental effects and consideration of the economic, technical, and other benefits and costs of the proposed action and alternatives and indicate

what other interests and considerations of Federal policy, including factors not related to environmental quality if applicable, are relevant to the consideration of environmental effects of the proposed action identified under paragraph (a) of this section.

(2) The draft environmental impact statement prepared at the early site permit stage must focus on the environmental effects of construction and operation of a reactor, or reactors, which have characteristics that fall within the postulated site parameters, and will not include an assessment of the benefits (for example, need for power) of the proposed action or an evaluation of other alternative energy sources unless considered by the applicant, but must include an evaluation of alternative sites to determine whether there is any obviously superior alternative to the site proposed.

(3) The draft supplemental environmental impact statement prepared at the combined license stage when an early site permit is referenced need not include detailed information or analyses that were resolved in the final environmental impact statement prepared by the Commission in connection with the early site permit, if:

(i) The design of the facility falls within the design parameters specified in the early site permit;

(ii) The site falls within the site characteristics specified within the early site permit; and

(iii) There is no significant new environmental issue or information not considered on the site or the design only to the extent that they differ from that discussed in the final environmental impact statement prepared by the Commission in connection with the early site permit.

(4) The draft supplemental environmental impact statement prepared at the license renewal stage under § 51.95(c) need not discuss the economic or technical benefits and costs of either the proposed action or alternatives except if benefits and costs are either essential for a determination regarding the inclusion of an alternative in the range of alternatives considered or relevant to mitigation. In addition, the supplemental environmental impact statement prepared at the license renewal stage need not discuss other issues not related to the environmental effects of the proposed action and associated alternatives. The draft supplemental environmental impact statement for license renewal prepared under § 51.95(c) will rely on conclusions as amplified by the supporting information in the GEIS for issues designated as Category 1 in appendix B to subpart A of this part. The draft supplemental environmental impact statement must contain an analysis of those issues identified as Category 2 in appendix B to subpart A of this part that are open for the proposed action.

(5) The analysis for all draft environmental impact statements will, to the fullest extent practicable, quantify the various factors considered. To the extent that there are important qualitative considerations or factors that cannot be quantified, these considerations or factors will be discussed in qualitative terms.

(6) Due consideration will be given to compliance with environmental quality standards and requirements that have been imposed by Federal, State, regional, and local agencies having responsibility for environmental protection, including applicable zoning and land-use regulations and water pollution limitations or requirements issued or imposed under the Federal Water Pollution Control Act. The environmental impact of the proposed action will be considered in the analysis with respect to matters covered by environmental quality standards and requirements irrespective of whether a certification or license from the appropriate authority has been obtained.[3] While satisfaction of Commission standards and criteria pertaining to radiological effects will be necessary to meet the licensing requirements of the Atomic Energy Act, the analysis will, for the purposes of NEPA, consider the radiological effects of the proposed action and alternatives.

(e) *Effect of limited work authorization.* If a limited work authorization was issued either in connection with or subsequent to an early site permit, or in connection with a construction permit or combined license application, then the environmental impact statement for the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization.

* * * * *

19. Section 51.76 is revised to read as follows:

§ 51.76 Draft environmental impact statement-limited work authorization.

The NRC will prepare a draft environmental impact statement relating to issuance of a limited work authorization in accordance with the procedures and measures described in §§ 51.70, 51.71, and 51.73, as further supplemented or modified in the following paragraphs.

(a) *Limited work authorization submitted as part of complete construction permit or combined license application.* If the application for a limited work authorization is submitted as part of a complete construction permit or combined license application, then the NRC may prepare a partial draft environmental impact statement, *provided, however,* that the analysis called for by § 51.71(d) will be limited to the activities proposed to be conducted under the limited work authorization. Alternatively, the NRC may prepare a complete draft environmental impact statement prepared in accordance with § 51.75(a) or (c), as applicable.

(b) *Phased application for limited work authorization under § 2.101(a)(9) of this chapter.* If the application for a limited work authorization is submitted in accordance with § 2.101(a)(9) of this chapter, then the draft environmental impact statement for part one of the application may be limited to consideration of the activities proposed to be conducted under the limited work authorization, and the proposed redress plan. However, if the environmental report contains the full set of information required to be submitted under § 51.50(a) or (c), then the draft environmental impact statement will be prepared in accordance with § 51.75(a) or (c), as applicable. Siting issues, including whether there is an obviously superior alternative site, or issues related to operation of the proposed nuclear power plant at the site,

[3] Compliance with the environmental quality standards and requirements of the Federal Water Pollution Control Act (imposed by EPA or designated permitting states) is not a substitute for, and does not negate the requirement for NRC to weigh all environmental effects of the proposed action, including the degradation, if any, of water quality, and to consider alternatives to the proposed action that are available for reducing adverse effects. Where an environmental assessment of aquatic impact from plant discharges is available from the permitting authority, the NRC will consider the assessment in its determination of the magnitude of environmental impacts for striking an overall cost-benefit balance at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage. When the assessment of aquatic impacts is not available from the permitting authority, NRC will establish on its own, or in conjunction with the permitting authority and other agencies having relevant expertise, the magnitude of potential impacts for striking an overall cost-benefit balance for the facility at the construction permit and operating license and early site permit and combined license stages, and in its determination of whether the adverse environmental impacts of license renewal are so great that preserving the option of license renewal for energy planning decision-makers would be unreasonable at the license renewal stage.

including need for power may not be considered. After part two of the application is docketed, the NRC will prepare a draft supplement to the final environmental impact statement for part two of the application under § 51.72. No updating of the information contained in the final environmental statement prepared for part one is necessary in preparation of the supplemental environmental impact statement. The draft supplement must consider all environmental impacts associated with the prior issuance of the limited work authorization, but may not address or consider the sunk costs associated with the limited work authorization.

(c) *Limited work authorization submitted as part of an early site permit application*. If the application for a limited work authorization is submitted as part of an application for an early site permit, then the NRC will prepare an environmental impact statement in accordance with § 51.75(b). However, the analysis called for by § 51.71(d) must also address the activities proposed to be conducted under the limited work authorization.

(d) *Limited work authorization request submitted by early site permit holder*. If the application for a limited work authorization is submitted by a holder of an early site permit, then the NRC will prepare a prepare a draft supplement to the environmental impact statement for the early site permit. The supplement is limited to consideration of the activities proposed to be conducted under the limited work authorization, the adequacy of the proposed redress plan, and whether there is significant new information on the impacts of construction which materially affect the conclusions of the early site permit with respect to the environmental impacts of the activities to be conducted under the limited work authorization. No other updating of the information contained in the final environmental statement prepared for the early site permit is required.

(e) *Limited work authorization for site where EIS was prepared, but the facility was not constructed*. If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, a construction permit was issued but construction of the plant (as defined in § 50.10 of this chapter) was never commenced, the draft environmental impact statement shall incorporate by reference the earlier environmental impact statement. The draft environmental impact statement will be limited to a consideration of whether there is significant new information with respect to the environmental impacts of construction, relevant to the activities to be conducted under the limited work authority, such that the conclusion of the referenced environmental impact statement on the impacts of construction would, when analyzed in accordance with § 51.71, lead to the conclusion that the limited work authorization should not be issued or should be issued with appropriate conditions.

(f) A draft environmental impact statement prepared under this section must separately evaluate the environmental impacts and proposed alternatives attributable to the activities proposed to be conducted under the limited work authorization. However, if the Applicant's Environmental Report—Limited Work Authorization Stage also contains the information required to be submitted in the environmental report required under § 51.50, then the environmental impact statement must address the impacts of construction and operation for the proposed facility (including the environmental impacts attributable to the limited work authorization), and discuss the overall costs and benefits balancing for the underlying proposed action, in accordance with § 51.71, and § 51.75(a) or (c), as applicable.

20. In § 51.103, a new paragraph (a)(6) is added to read as follows:

§ 51.103 Record of decision—general.

(a) * * *

(6) In a construction permit or the combined license proceeding, where a limited work authorization under 10 CFR 50.10 was issued, the Commission's decision on the construction permit or combined license application will not address or consider the sunk costs associated with the limited work authorization in determining the proposed action.

* * * * *

21. In § 51.104, a new paragraph (c) is added to read as follows:

§ 51.104 NRC proceedings using public hearings; consideration of environmental impact statement.

* * * * *

(c) *Limited work authorization.* In any proceeding in which a limited work authorization is requested, unless the Commission orders otherwise, a party to the proceeding may take a position and offer evidence only on the aspects of the proposed action within the scope of NEPA and this subpart which are within the scope of that party's admitted contention, in accordance with the provisions of part 2 of this chapter applicable to the limited work authorization or in accordance with the terms of any notice of hearing applicable to the limited work authorization. In the proceeding, the presiding officer will decide any such matters in controversy among the parties.

22. Section 51.105, is revised to read as follows:

§ 51.105 Public hearings in proceedings for issuance of construction permits or early site permits; limited work authorizations.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a construction permit or early site permit for a nuclear power reactor, testing facility, fuel reprocessing plant or isotopic enrichment plant, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the construction permit or early site permit should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the construction permit or early site permit should be issued as proposed.

(b) The presiding officer in an early site permit hearing shall not admit contentions proffered by any party concerning the benefits assessment (e.g., need for power) or alternative energy sources if those issues were not addressed by the applicant in the early site permit application.

(c)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a construction permit for a nuclear power plant or an early site permit under part 52 of this chapter where the applicant requests a limited work authorization under § 50.10(c) of this chapter, the presiding officer shall——

(i) Determine whether the requirements of section 102(2)(A), (C)

and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(iv) In a contested proceeding, determine whether in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, significant new information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed.

(3) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section.

23. Section 51.107 is added to read as follows:

§ 51.107 Public hearings in proceedings for issuance of combined licenses; limited work authorizations.

(a) In addition to complying with applicable requirements of § 51.104, in a proceeding for the issuance of a combined license for a nuclear power reactor, the presiding officer will:

(1) Determine whether the requirements of section 102(2) (A), (C), and (E) of NEPA and the regulations in this subpart have been met;

(2) Independently consider the final balance among conflicting factors contained in the record of the proceeding with a view to determining the appropriate action to be taken;

(3) Determine, after weighing the environmental, economic, technical, and other benefits against environmental and other costs, and considering reasonable alternatives, whether the combined license should be issued, denied, or appropriately conditioned to protect environmental values;

(4) Determine, in an uncontested proceeding, whether the NEPA review conducted by the NRC staff has been adequate; and

(5) Determine, in a contested proceeding, whether in accordance with the regulations in this subpart, the combined license should be issued as proposed by the NRC's Director of Nuclear Reactor Regulation.

(b) If the combined license application references an early site permit, then the presiding officer in a combined license hearing shall not admit contentions proffered by any party on environmental issues which have been accorded finality under § 52.39 of this chapter, unless this contention—

(1) Demonstrates that the design of the facility falls outside the design parameters specified in the early site permit;

(2) Demonstrates that the site no longer falls within the site characteristics specified in the early site permit; or

(3) Raises any other significant environmental issue not considered which is material to the site or the design only to the extent that it differs from those discussed or it reflects significant new information in addition to that discussed in the final environmental impact statement prepared by the Commission in connection with the early site permit.

(c) If the combined license application references a standard design certification, or proposes to use a manufactured reactor, then the presiding officer in a combined license hearing may not admit contentions proffered by any party concerning severe accident mitigation design alternatives unless the contention demonstrates that the site characteristics fall outside of the site parameters in the standard design certification or underlying manufacturing license for the manufactured reactor.

(d)(1) In addition to complying with the applicable provisions of § 51.104, in any proceeding for the issuance of a combined license where the applicant requests a limited work authorization under § 50.10(c) of this chapter, the presiding officer shall—

(i) Determine whether the requirements of section 102(2)(A), (C) and (E) of NEPA and the regulations in the subpart have been met, with respect to the activities to be conducted under the limited work authorization;

(ii) Independently consider the balance among conflicting factors with respect to the limited work authorization which is contained in the record of the proceeding, with a view to determining the appropriate action to be taken;

(iii) In an uncontested proceeding, determine whether the NEPA review conducted by the NRC staff for the limited work authorization has been adequate; and

(iv) In a contested proceeding, determine whether in accordance with the regulations in this subpart, the limited work authorization should be issued as proposed by the NRC's Director of Nuclear Reactor Regulation.

(2) If the limited work authorization is for activities to be conducted at a site for which the Commission has previously prepared an environmental impact statement for the construction and operation of a nuclear power plant, and a construction permit was issued but construction of the plant was never completed, then in making the determinations in paragraph (c)(1) of this section, the presiding officer shall be limited to a consideration whether there is, with respect to construction activities encompassed by the environmental impact statement which are analogous to the activities to be conducted under the limited work authorization, significant new information on the environmental impacts of those activities, such that the limited work authorization should not be issued as proposed by the Director of Nuclear Reactor Regulation.

(3) In making the determination required by this section, the presiding officer may not address or consider the sunk costs associated with the limited work authorization.

(4) The presiding officer's determination in this paragraph shall be made in a partial initial decision to be issued separately from, and in advance of, the presiding officer's decision in paragraph (a) of this section on the combined license.

PART 52—EARLY SITE PERMITS; STANDARD DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

24. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 189, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as

amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note).

25. Section 52.1 is removed.

26. Section 52.3 is redesignated as § 52.1 and revised to read as follows:

§ 52.1 Definitions.

(a) As used in this part—

Combined license means a combined construction permit and operating license with conditions for a nuclear power facility issued under subpart C of this part.

Decommission means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits—

(i) Release of the property for unrestricted use and termination of the license; or

(ii) Release of the property under restricted conditions and termination of the license.

Design characteristics are the actual features of a reactor or reactors. Design characteristics are specified in a standard design approval, a standard design certification, or a combined license application.

Design parameters are the postulated features of a reactor or reactors that could be built at a proposed site. Design parameters are specified in an early site permit.

Early site permit means a Commission approval, issued under subpart A of this part, for a site or sites for one or more nuclear power facilities.

License means a license, including an early site permit, combined license or manufacturing license under this part or a renewed license issued by the Commission under this part or part 54 of this chapter.

Licensee means a person who is authorized to conduct activities under a license issued by the Commission.

Limited work authorization means the authorization provided by the Director of Nuclear Reactor Regulation under § 50.10 of this chapter.

Manufacturing license means a license, issued under subpart F of this part, authorizing the manufacture of nuclear power reactors but not their construction, installation, or operation at the sites on which the reactors are to be operated.

Modular design means a nuclear power station that consists of two or more essentially identical nuclear reactors (modules) and each module is a separate nuclear reactor capable of being operated independent of the state of completion or operating condition of any other module co-located on the same site, even though the nuclear power station may have some shared or common systems.

Prototype plant means a nuclear power plant that is used to test new safety features, such as the testing required under 10 CFR 50.43(e). The prototype plant is similar to a first-of-a-kind or standard plant design in all features and size, but may include additional safety features to protect the public and the plant staff from the possible consequences of accidents during the testing period.

Site characteristics are the actual physical, environmental and demographic features of a site. Site characteristics are specified in an early site permit or in a final safety analysis report for a combined license.

Site parameters are the postulated physical, environmental and demographic features of an assumed site. Site parameters are specified in a standard design approval, standard design certification, or a manufacturing license.

Standard design means a design which is sufficiently detailed and complete to support certification in accordance with subpart B or E of this part, and which is usable for a multiple number of units or at a multiple number of sites without reopening or repeating the review.

Standard design approval or design approval means an NRC staff approval, issued under subpart E of this part, of a final standard design for a nuclear power reactor of the type described in 10 CFR 50.22. The approval may be for either the final design for the entire reactor facility or the final design of major portions thereof.

Standard design certification or design certification means a Commission approval, issued under subpart B of this part, of a final standard design for a nuclear power facility. This design may be referred to as a certified standard design.

(b) All other terms in this part have the meaning set out in 10 CFR 50.2, or Section 11 of the Atomic Energy Act, as applicable.

27. Section 52.17 is revised to read as follows:

§ 52.17 Contents of applications; technical information.

(a) The application must contain:

(1) A site safety analysis report. The site safety analysis report must include the following:

(i) The specific number, type, and thermal power level of the facilities, or range of possible facilities, for which the site may be used;

(ii) The anticipated maximum levels of radiological and thermal effluents each facility will produce;

(iii) The type of cooling systems, intakes, and outflows that may be associated with each facility;

(iv) The boundaries of the site;

(v) The proposed general location of each facility on the site;

(vi) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and period of time in which the historical data have been accumulated;

(vii) The location and description of any nearby industrial, military, or transportation facilities and routes;

(viii) The existing and projected future population profile of the area surrounding the site;

(ix) A description and safety assessment of the site on which a facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(ix)(A) and (a)(1)(ix)(B) of this section. In performing this assessment, an applicant shall assume a fission product release [1] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a radiation

[1] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

dose in excess of 25 rem [2] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE;

(x) For nuclear power facilities to be sited on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

(xi) Information demonstrating that site characteristics are such that adequate security plans and measures can be developed;

(xii) For applications submitted after [effective date of final rule], a description of the quality assurance program applied to site-related activities for the future design, fabrication, construction, and testing of the structures, systems, and components of a facility or facilities that may be constructed on the site. Appendix B to 10 CFR part 50 contains requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant site must include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied; and

(xiii) An evaluation of the site against applicable sections of the Standard Review Plan (SRP) revision in effect 6 months before the docket date of the application. The evaluation required by this section must include an identification and description of all differences in analytical techniques and procedural measures proposed for a site and those corresponding techniques and measures given in the SRP acceptance criteria. Where such a difference exists, the evaluation must discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP was issued to establish criteria that the NRC staff intends to use in evaluating whether an applicant/licensee meets the Commission's regulations. The SRP is not a substitute for the regulations, and compliance is not a requirement.

(2) A complete environmental report as required by 10 CFR 51.50(b).

(b)(1) The application must identify physical characteristics of the proposed site, such as egress limitations from the area surrounding the site, that could pose a significant impediment to the development of emergency plans. If physical characteristics are identified that could pose a significant impediment to the development of emergency plans, the application must identify measures that would, when implemented, mitigate or eliminate the significant impediment.

(2) The application may also:

(i) Propose major features of the emergency plans in the site safety analysis report, in accordance with the pertinent standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50, such as the exact size and configuration of the emergency planning zones, that can be reviewed and approved by NRC in consultation with the Federal Emergency Management Agency (FEMA) in the absence of complete and integrated emergency plans; or

(ii) Propose complete and integrated emergency plans in the site safety analysis report for review and approval by the NRC, in consultation with FEMA, in accordance with the applicable standards of 10 CFR 50.47, and the requirements of appendix E to 10 CFR part 50. To the extent approval of emergency plans is sought, the application must contain the information required by §§ 50.33(g) and (j) of this chapter.

(3) Emergency plans, and each major feature of an emergency plan, submitted under paragraph (b)(2) of this section must include the proposed inspections, tests, and analyses that the holder of a combined license referencing the early site permit shall perform, and the acceptance criteria that are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the license, the provisions of the Atomic Energy Act, and the NRC's regulations.

(4) Under paragraphs (b)(1) and (b)(2)(i) of this section, the application must include a description of contacts and arrangements made with Federal, State, and local governmental agencies with emergency planning responsibilities. The application must contain any certifications that have been obtained. If these certifications cannot be obtained, the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site. Under the option set forth in paragraph (b)(2)(ii) of this section, the applicant shall make good faith efforts to obtain from the same governmental agencies certifications that:

(i) The proposed emergency plans are practicable;

(ii) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(iii) That these agencies are committed to executing their responsibilities under the plans in the event of an emergency.

(c) An applicant may request that a limited work authorization under 10 CFR 50.10 be issued in conjunction with the early site permit. The application must include the information otherwise required by 10 CFR 50.10.

(d) The NRC staff will advise the applicant on whether any information beyond that required by this section must be submitted.

28. Section 52.24 is revised to read as follows:

§ 52.24 Issuance of early site permit.

(a) After conducting a hearing under § 52.21 and receiving the report to be submitted by the ACRS under § 52.23, the Commission may issue an early site permit, in the form the Commission deems appropriate, if the Commission finds that:

(1) An application for an early site permit meets the applicable standards and requirements of the Act and the Commission's regulations;

(2) Notifications, if any, to other agencies or bodies have been duly made;

(3) There is reasonable assurance that the site is in conformity with the provisions of the Act, and the Commission's regulations;

(4) The applicant is technically qualified to engage in any activities authorized;

(5) The proposed inspections, tests, analyses and acceptance criteria,

[2] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

including any on emergency planning, are necessary and sufficient, within the scope of the early site permit, to provide reasonable assurance that the facility has been constructed and will be operated in conformity with the license, the provisions of the Act, and the Commission's regulations;

(6) Issuance of the permit will not be inimical to the common defense and security or to the health and safety of the public;

(7) Any significant adverse environmental impact resulting from activities requested under § 52.17(c) can be redressed; and

(8) The findings required by subpart A of 10 CFR part 51 have been made.

(b) The early site permit must specify the site characteristics, design parameters, and terms and conditions of the early site permit the Commission deems appropriate. Before issuance of either a construction permit or combined license referencing an early site permit, the Commission shall find that any relevant terms and conditions of the early site permit have been met.

29. Section 52.25 is revised to read as follows:

§ 52.25 Limited work authorization after issuance of early site permit.

A holder of an early site permit may request a limited work authorization in accordance with 10 CFR 50.10 of this chapter.

30. Section 52.79 is revised to read as follows:

§ 52.79 Contents of applications; technical information in final safety analysis report.

(a) The application must contain a final safety analysis report that describes the facility, presents the design bases and the limits on its operation, and presents a safety analysis of the structures, systems, and components of the facility as a whole. The final safety analysis report must include the following information, at a level of information sufficient to enable the Commission to reach a final conclusion on all safety matters that must be resolved by the Commission before issuance of a combined license:

(1)(i) The boundaries of the site;

(ii) The proposed general location of each facility on the site;

(iii) The seismic, meteorological, hydrologic, and geologic characteristics of the proposed site with appropriate consideration of the most severe of the natural phenomena that have been historically reported for the site and surrounding area and with sufficient margin for the limited accuracy, quantity, and time in which the historical data have been accumulated;

(iv) The location and description of any nearby industrial, military, or transportation facilities and routes;

(v) The existing and projected future population profile of the area surrounding the site;

(vi) A description and safety assessment of the site on which the facility is to be located. The assessment must contain an analysis and evaluation of the major structures, systems, and components of the facility that bear significantly on the acceptability of the site under the radiological consequence evaluation factors identified in paragraphs (a)(1)(vi)(A) and (a)(1)(vi)(B) of this section. In performing this assessment, an applicant shall assume a fission product release [1] from the core into the containment assuming that the facility is operated at the ultimate power level contemplated. The applicant shall perform an evaluation and analysis of the postulated fission product release, using the expected demonstrable containment leak rate and any fission product cleanup systems intended to mitigate the consequences of the accidents, together with applicable site characteristics, including site meteorology, to evaluate the offsite radiological consequences. Site characteristics must comply with part 100 of this chapter. The evaluation must determine that:

(A) An individual located at any point on the boundary of the exclusion area for any 2 hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 25 rem [2] total effective dose equivalent (TEDE).

(B) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage) would not receive a radiation dose in excess of 25 rem TEDE; and

(2) A description and analysis of the structures, systems, and components of the facility with emphasis upon performance requirements, the bases, with technical justification, upon which these requirements have been established, and the evaluations required to show that safety functions will be accomplished. It is expected that reactors will reflect through their design, construction and operation an extremely low probability for accidents that could result in the release of significant quantities of radioactive fission products. The descriptions must be sufficient to permit understanding of the system designs and their relationship to safety evaluations. Items as the reactor core, reactor coolant system, instrumentation and control systems, electrical systems, containment system, other engineered safety features, auxiliary and emergency systems, power conversion systems, radioactive waste handling systems, and fuel handling systems must be discussed insofar as they are pertinent. The following power reactor design characteristics and proposed operation will be taken into consideration by the Commission:

(i) Intended use of the reactor including the proposed maximum power level and the nature and inventory of contained radioactive materials;

(ii) The extent to which generally accepted engineering standards are applied to the design of the reactor;

(iii) The extent to which the reactor incorporates unique, unusual or enhanced safety features having a significant bearing on the probability or consequences of accidental release of radioactive materials;

(iv) The safety features that are to be engineered into the facility and those barriers that must be breached as a result of an accident before a release of radioactive material to the environment can occur. Special attention must be directed to plant design features intended to mitigate the radiological consequences of accidents. In performing this assessment, an applicant shall assume a fission product release [3] from the core into the containment assuming that the facility

[1] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

[2] A whole body dose of 25 rem has been stated to correspond numerically to the once in a lifetime accidental or emergency dose for radiation workers which, according to NCRP recommendations at the time could be disregarded in the determination of their radiation exposure status (see NBS Handbook 69 dated June 5, 1959). However, its use is not intended to imply that this number constitutes an acceptable limit for an emergency dose to the public under accident conditions. Rather, this dose value has been set forth in this section as a reference value, which can be used in the evaluation of plant design features with respect to postulated reactor accidents, to assure that these designs provide assurance of low risk of public exposure to radiation, in the event of an accident.

[3] The fission product release assumed for this evaluation should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events. These accidents have generally been assumed to result in substantial meltdown of the core with subsequent release into the containment of appreciable quantities of fission products.

is operated at the ultimate power level contemplated;

(3) The kinds and quantities of radioactive materials expected to be produced in the operation and the means for controlling and limiting radioactive effluents and radiation exposures within the limits set forth in part 20 of this chapter;

(4) The design of the facility including:

(i) The principal design criteria for the facility. Appendix A to part 50 of this chapter, ''General Design Criteria for Nuclear Power Plants,'' establishes minimum requirements for the principal design criteria for water-cooled nuclear power plants similar in design and location to plants for which construction permits have previously been issued by the Commission and provides guidance to applicants in establishing principal design criteria for other types of nuclear power units;

(ii) The design bases and the relation of the design bases to the principal design criteria;

(iii) Information relative to materials of construction, arrangement, and dimensions, sufficient to provide reasonable assurance that the design will conform to the design bases with adequate margin for safety.

(5) An analysis and evaluation of the design and performance of structures, systems, and components with the objective of assessing the risk to public health and safety resulting from operation of the facility and including determination of the margins of safety during normal operations and transient conditions anticipated during the life of the facility, and the adequacy of structures, systems, and components provided for the prevention of accidents and the mitigation of the consequences of accidents. Analysis and evaluation of ECCS cooling performance and the need for high-point vents following postulated loss-of-coolant accidents must be performed in accordance with the requirements of §§ 50.46 and 50.46a of this chapter;

(6) A description and analysis of the fire protection design features for the reactor necessary to comply with 10 CFR part 50, appendix A, GDC 3, and § 50.48 of this chapter;

(7) A description of protection provided against pressurized thermal shock events, including projected values of the reference temperature for reactor vessel beltline materials as defined in §§ 50.60, and 50.61(b)(1) and (b)(2) of this chapter;

(8) The analyses and the descriptions of the equipment and systems required by § 50.44 of this chapter for combustible gas control;

(9) The coping analyses required, and any necessary design features necessary to address station blackout, as described in § 50.63 of this chapter;

(10) A description of the program required by § 50.49(a) of this chapter for the environmental qualification of electric equipment important to safety and the list of electric equipment important to safety that is required by 10 CFR 50.49(d);

(11) A description of the program(s) necessary to ensure that the systems and components meet the requirements of the ASME Boiler and Pressure Vessel Code in accordance with § 50.55a of this chapter;

(12) A description of the primary containment leakage rate testing program necessary to ensure that the containment meets the requirements of Appendix J to 10 CFR part 50;

(13) A description of the reactor vessel material surveillance program required by Appendix H to 10 CFR part 50;

(14) A description of the operator training program necessary to meet the requirements of 10 CFR part 55;

(15) A description of the program for monitoring the effectiveness of maintenance necessary to meet the requirements of § 50.65 of this chapter;

(16) The information with respect to the design of equipment to maintain control over radioactive materials in gaseous and liquid effluents produced during normal reactor operations, as described in § 50.34a(d) of this chapter;

(17) The information with respect to compliance with technically relevant positions of the Three Mile Island requirements in § 50.34(f) of this chapter, with the exception of §§ 50.34(f)(1)(xii), (f)(2)(ix), and (f)(3)(v);

(18) If the applicant seeks to use risk-informed treatment of SSCs in accordance with § 50.69 of this chapter, the information required by § 50.69(b)(2) of this chapter;

(19) Information necessary to demonstrate that the SSCs important to safety comply with the earthquake engineering criteria in 10 CFR part 50, appendix S;

(20) Proposed technical resolutions of those unresolved safety issues and medium- and high-priority generic safety issues that are identified in the version of NUREG–0933 current on the date 6 months before application and that are technically relevant to the design;

(21) Emergency plans complying with the requirements of § 50.47 of this chapter, and 10 CFR part 50, appendix E;

(22)(i) All emergency plan certifications that have been obtained from the State and local governmental agencies with emergency planning responsibilities must state that:

(A) The proposed emergency plans are practicable;

(B) These agencies are committed to participating in any further development of the plans, including any required field demonstrations; and

(C) These agencies are committed to executing their responsibilities under the plans in the event of an emergency;

(ii) If certifications cannot be obtained after sustained, good faith efforts by the applicant, then the application must contain information, including a utility plan, sufficient to show that the proposed plans provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency at the site.

(23) An applicant may request that a limited work authorization under 10 CFR 50.10 be issued in advance of issuance of the combined license. The application must include the information otherwise required by 10 CFR 50.10, in accordance with either 10 CFR 2.101(a)(1) through (4), or 10 CFR 2.101(a)(9).

(24) If the application is for a nuclear power reactor design which differs significantly from light-water reactor designs that were licensed before 1997 or use simplified, inherent, passive, or other innovative means to accomplish their safety functions, the application must describe how the design meets the requirements in § 50.43(e) of this chapter;

(25) A description of the quality assurance program to be applied to the design, fabrication, construction, and testing of the structures, systems, and components of the facility. Appendix B to 10 CFR part 50 sets forth the requirements for quality assurance programs for nuclear power plants. The description of the quality assurance program for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(26) The applicant's organizational structure, allocations or responsibilities and authorities, and personnel qualifications requirements for operation;

(27) Managerial and administrative controls to be used to assure safe operation. Appendix B to 10 CFR part 50 sets forth the requirements for these controls for nuclear power plants. The information on the controls to be used for a nuclear power plant shall include a discussion of how the applicable requirements of appendix B to 10 CFR part 50 will be satisfied;

(28) Plans for preoperational testing and initial operations;

(29) Plans for conduct of normal operations, including maintenance, surveillance, and periodic testing of structures, systems, and components;

(30) Proposed technical specifications prepared in accordance with the requirements of §§ 50.36 and 50.36a of this chapter;

(31) For nuclear power plants to be operated on multi-unit sites, an evaluation of the potential hazards to the structures, systems, and components important to safety of operating units resulting from construction activities, as well as a description of the managerial and administrative controls to be used to provide assurance that the limiting conditions for operation are not exceeded as a result of construction activities at the multi-unit sites;

(32) The technical qualifications of the applicant to engage in the proposed activities in accordance with the regulations in this chapter;

(33) A description of the training program required by § 50.120 of this chapter;

(34) A description and plans for implementation of an operator requalification program. The operator requalification program must as a minimum, meet the requirements for those programs contained in § 55.59 of this chapter;

(35) A physical security plan, describing how the applicant will meet the requirements of 10 CFR part 73 (and 10 CFR part 11, if applicable, including the identification and description of jobs as required by § 11.11(a) of this chapter, at the proposed facility). The plan must list tests, inspections, audits, and other means to be used to demonstrate compliance with the requirements of 10 CFR parts 11 and 73, if applicable;

(36)(i) A safeguards contingency plan in accordance with the criteria set forth in appendix C to 10 CFR part 73. The safeguards contingency plan shall include plans for dealing with threats, thefts, and radiological sabotage, as defined in part 73 of this chapter, relating to the special nuclear material and nuclear facilities licensed under this chapter and in the applicant's possession and control. Each application for this type of license shall include the information contained in the applicant's safeguards contingency plan.[4] (Implementing procedures required for this plan need not be submitted for approval.)

(ii) Each applicant who prepares a physical security plan, a safeguards contingency plan, or a guard qualification and training plan, shall protect the plans and other related Safeguards Information against unauthorized disclosure in accordance with the requirements of § 73.21 of this chapter, as appropriate.

(37) The information which demonstrates how operating experience insights from generic letters and bulletins issued up to 6 months before the docket date of the application, or comparable international operating experience, have been incorporated into the plant design;

(38) A description and analysis of design features for the prevention and mitigation of severe accidents (core-melt accidents), including challenges to containment integrity caused by core-concrete interaction, steam explosion, high-pressure core melt ejection, hydrogen detonation, and containment bypass;

(39) The earliest and latest dates for completion of the construction;

(40) [Reserved]

(41) For applications for light-water cooled nuclear power plant combined licenses, an evaluation of the facility against the Standard Review Plan (SRP) in effect 6 months before the docket date of the application. The evaluation required by this section must include an identification and description of all differences in design features, analytical techniques and procedural measures proposed for a facility and those corresponding features, techniques and measures given in the SRP acceptance criteria. Where a difference exists, the evaluation must discuss how the proposed alternative provides an acceptable method of complying with the Commission's regulations, or portions thereof, that underlie the corresponding SRP acceptance criteria. The SRP was issued to establish criteria that the NRC staff intends to use in evaluating whether an applicant/licensee meets the Commission's regulations. The SRP is not a substitute for the regulations, and compliance is not a requirement;

(42) Information demonstrating how the applicant will comply with requirements for reduction of risk from anticipated transients without scram (ATWS) events in § 50.62 of this chapter;

(43) Information demonstrating how the applicant will comply with requirements for criticality accidents in § 50.68 of this chapter;

(44) The NRC staff will advise the applicant on whether any information beyond that required by this section must be submitted.

(b) If the application for a final safety analysis report references an early site permit, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the early site permit, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the design of the facility falls within the site characteristics and design parameters specified in the early site permit.

(2) If the final safety analysis report does not demonstrate that design of the facility falls within the site characteristics and design parameters, the application must include a request for a variance that complies with the requirements of §§ 52.39 and 52.93.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the early site permit will be satisfied by the date of issuance of the combined license.

(4) If the early site permit approves complete and integrated emergency plans, or major features of emergency plans, then the final safety analysis report must include any new or additional information that updates and corrects the information that was provided under § 52.17(b), and discuss whether the new or additional information materially changes the bases for compliance with the applicable requirements. If the proposed facility emergency plans incorporate existing emergency plans or major features of emergency plans, the application must identify changes to the emergency plans or major features of emergency plans that have been incorporated into the proposed facility emergency plans and that constitute a decrease in effectiveness under § 50.54(q) of this chapter.

(5) If complete and integrated emergency plans are approved as part of the early site permit, new certifications meeting the requirements of paragraph (a)(22) of this section are not required.

(c) If the combined license application references a standard design approval, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design approval, but must contain, in addition to the information and analyses otherwise required, information sufficient to

[4] A physical security plan that contains all the information required in both §§ 73.55 of this chapter and appendix C to 10 CFR part 73 satisfies the requirement for a contingency plan.

demonstrate that the characteristics of the site fall within the site parameters specified in the design approval.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.137 have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the final design approval will be satisfied by the date of issuance of the combined license.

(d) If the combined license application references a standard design certification, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the design certification, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the characteristics of the site fall within the site parameters specified in the design certification.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design under § 52.47 have been met.

(3) The final safety analysis report must demonstrate that all requirements and restrictions set forth in the referenced design certification rule must be satisfied by the date of issuance of the combined license.

(e) If the combined license application references the use of one or more manufactured nuclear power reactors licensed under subpart F of this part, then the following requirements apply:

(1) The final safety analysis report need not contain information or analyses submitted to the Commission in connection with the manufacturing license, but must contain, in addition to the information and analyses otherwise required, information sufficient to demonstrate that the site parameters for the manufactured reactor are bounded by the site where the manufactured reactor is to be installed and used.

(2) The final safety analysis report must demonstrate that the interface requirements established for the design have been met.

(3) The final safety analysis report must demonstrate that all terms and conditions that have been included in the manufacturing license will be satisfied by the date of issuance of the combined license.

31. Section 52.80 is added to read as follows:

§ 52.80 Contents of applications; additional technical information.

The application must contain:

(a) A plant-specific probabilistic risk assessment (PRA). If the application references a standard design certification or standard design approval, or if the application proposes to use a nuclear power reactor manufactured under a manufacturing license under subpart F of this part, the plant-specific PRA must use the PRA for the design certification, design approval, or manufactured reactor, as applicable, and must be updated to account for site-specific design information and any design changes, departures, or variances.

(b) The proposed inspections, tests, and analyses, including those applicable to emergency planning, that the licensee shall perform, and the acceptance criteria which are necessary and sufficient to provide reasonable assurance that, if the inspections, tests, and analyses are performed and the acceptance criteria met, the facility has been constructed and will operate in conformity with the combined license, the provisions of the Atomic Energy Act, and the NRC's regulations.

(1) If the application references an early site permit with ITAAC, the early site permit ITAAC must apply to those aspects of the combined license which are approved in the early site permit.

(2) If the application references a standard design certification, the ITAAC contained in the certified design must apply to those portions of the facility design which are approved in the design certification.

(3) If the application references an early site permit with ITAAC or a standard design certification or both, the application may include a notification that a required inspection, test, or analysis in the ITAAC has been successfully completed and that the corresponding acceptance criterion has been met. The **Federal Register** notification required by § 52.85 must indicate that the application includes this notification.

(c) An environmental report, in accordance with 10 CFR 51.50(c) if a limited work authorization under 10 CFR 50.10 is not requested in conjunction with the combined license application, or in accordance with §§ 51.49 and 51.50(c) of this chapter if a limited work authorization is requested in conjunction with the combined license application.

Dated at Rockville, Maryland, this 6th day of October 2006.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 06–8656 Filed 10–16–06; 8:45 am]

BILLING CODE 7590–01–P

Federal Register

Tuesday,
October 17, 2006

Part V

The President

Proclamation 8068—National Energy Awareness Month, 2006

Proclamation 8069—White Cane Safety Day, 2006

Federal Register
Vol. 71, No. 200
Tuesday, October 17, 2006

Presidential Documents

Title 3—

The President

Proclamation 8068 of October 12, 2006

National Energy Awareness Month, 2006

By the President of the United States of America

A Proclamation

Our Nation is moving toward remarkable technological advances that will make energy cleaner, more abundant, and more affordable for our citizens. During National Energy Awareness Month, we underscore our commitment to a more secure energy future.

My Administration is working to improve energy efficiency and conservation, increase our domestic supply of energy, and diversify our energy supply through advanced technologies. Since 2001, we have invested nearly $10 billion in the development of cleaner, less expensive, and more reliable energy sources. We developed a comprehensive National Energy Policy, and last year I signed into law the Energy Policy Act of 2005 -- the first comprehensive energy bill in more than a decade.

My Administration's Advanced Energy Initiative seeks to diversify energy resources by substantially increasing funding for clean-energy research. To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants, revolutionary solar and wind technologies, and clean, safe nuclear energy. We will focus on improving hybrid and hydrogen technologies for our automobiles and increasing the use of biofuels. By harnessing the power of technology, we can grow our economy, protect our environment, and enhance our energy security.

Technology is also helping develop new energy-saving products that give our consumers better performance at a lower cost. At home, energy-efficient windows reduce the loss of hot and cold air, and high efficiency light-bulbs last longer than traditional bulbs while requiring less electricity. The Federal Government's Energy Savers website, energysavers.gov, offers more information about how to use less energy in homes, offices, and vehicles, and how consumers can save money on energy costs.

Meeting our growing energy needs will require creativity, determination, and discipline. By working together, we can foster economic growth, improve our environment, and leave behind a safer, cleaner, more prosperous world for future generations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim October 2006 as National Energy Awareness Month. I encourage Americans to take steps to conserve energy and develop responsible habits that will reduce energy consumption in their everyday lives.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8759
Filed 10–16–06; 8:51 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 8069 of October 12, 2006

White Cane Safety Day, 2006

By the President of the United States of America

A Proclamation

Our Nation believes in the promise of all our citizens, and we must work to ensure that the opportunities of America are more accessible to every person. Many Americans who are blind or visually impaired use white canes to enable them to enjoy greater mobility, engage in productive work, and participate fully in all aspects of life. On White Cane Safety Day, we celebrate the many achievements of Americans who are blind or visually impaired, and we recognize the white cane as an important symbol of their determination and independence.

My Administration remains committed to removing barriers that confront Americans with disabilities. Since we launched the New Freedom Initiative 5 years ago, we have worked to improve access to community life, expand educational opportunities, strengthen training and employment services, and promote the development of technology for people with disabilities. We are building on the progress of the Americans with Disabilities Act and working to make America a place where all citizens have the opportunity to realize their full potential.

The Congress, by joint resolution (Public Law 88–628) approved on October 6, 1964, as amended, has designated October 15 of each year as ''White Cane Safety Day.''

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim October 15, 2006, as White Cane Safety Day. I call upon public officials, business leaders, educators, librarians, and all the people of the United States to join as we work to ensure that the benefits and privileges of life in our great Nation are available to Americans who are blind or visually impaired, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twelfth day of October, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–8760
Filed 10–16–06; 8:51 am]
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Federal Register

Tuesday,
October 17, 2006

Part VI

The President

Executive Order 13412—Blocking Property and Prohibiting Transactions With the Government of Sudan

Federal Register
Vol. 71, No. 200
Tuesday, October 17, 2006

Presidential Documents

Title 3—

The President

Executive Order 13412 of October 13, 2006

Blocking Property of and Prohibiting Transactions With the Government of Sudan

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*)(IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*)(NEA), and section 301 of title 3, United States Code, and taking appropriate account of the Darfur Peace and Accountability Act of 2006 (the ''Act''),

I, GEORGE W. BUSH, President of the United States of America, find that, due to the continuation of the threat to the national security and foreign policy of the United States created by certain policies and actions of the Government of Sudan that violate human rights, in particular with respect to the conflict in Darfur, where the Government of Sudan exercises administrative and legal authority and pervasive practical influence, and due to the threat to the national security and foreign policy of the United States posed by the pervasive role played by the Government of Sudan in the petroleum and petrochemical industries in Sudan, it is in the interests of the United States to take additional steps with respect to the national emergency declared in Executive Order 13067 of November 3, 1997. Accordingly, I hereby order:

Section 1. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) or in regulations, orders, directives, or licenses that may be issued pursuant to this order, all property and interests in property of the Government of Sudan that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Sec. 2. Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all transactions by United States persons relating to the petroleum or petrochemical industries in Sudan, including, but not limited to, oilfield services and oil or gas pipelines, are prohibited.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. (a) Subject to paragraph (b) of this section, restrictions imposed by this order shall be in addition to, and do not derogate from, restrictions imposed in and under Executive Order 13067.

(b)(i) None of the prohibitions in section 2 of Executive Order 13067 shall apply to activities or related transactions with respect to Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, or marginalized areas in and around Khartoum, provided that the activities or transactions do not involve any property or interests in property of the Government of Sudan.

(ii) The Secretary of State, after consultation with the Secretary of the Treasury, may define the term ''Southern Sudan, Southern Kordofan/Nuba Mountains State, Blue Nile State, Abyei, Darfur, or marginalized areas in and around Khartoum'' for the purposes of this order.

(c) The function of the President under subsection 6(c)(1) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497), as amended by section 5(a)(3) of the Act, is assigned to the Secretary of the Treasury as appropriate in the performance of such function.

(d) The functions of the President under subsection 6(c)(2) and the last sentence of 6(d) of the Comprehensive Peace in Sudan Act of 2004 (Public Law 108–497), as amended by subsections 5(a)(3) and (b), respectively, of the Act, are assigned to the Secretary of State, except that the function of denial of entry is assigned to the Secretary of Homeland Security.

(e) The functions of the President under sections 7 and 8 of the Act are assigned to the Secretary of State.

Sec. 5. Nothing in this order shall prohibit:

(a) transactions for the conduct of the official business of the Federal Government or the United Nations by employees thereof; or

(b) transactions in Sudan for journalistic activity by persons regularly employed in such capacity by a news-gathering organization.

Sec. 6. For the purposes of this order:

(a) the term ''person'' means an individual or entity;

(b) the term ''entity'' means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term ''United States person'' means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States; and

(d) the term ''Government of Sudan'' includes the Government of Sudan, its agencies, instrumentalities, and controlled entities, and the Central Bank of Sudan, but does not include the regional government of Southern Sudan.

Sec. 7. For those persons whose property and interests in property are blocked pursuant to section 1 of this order who might have a constitutional presence in the United States, I find that, because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13067 there need be no prior notice of a determination made pursuant to section 1 of this order.

Sec. 8. The Secretary of the Treasury, after consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All executive agencies of the United States Government are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order and, where appropriate, to advise the Secretary of the Treasury in a timely manner of the measures taken. The Secretary of the Treasury shall ensure compliance with those provisions of section 401 of the NEA (50 U.S.C. 1641) applicable to the Department of the Treasury in relation to this order.

Sec. 9. This order is not intended to, and does not, create any right, benefit, or privilege, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.

Sec. 10. This order shall take effect upon the enactment of the Darfur Peace and Accountability Act of 2006.

THE WHITE HOUSE,
October 13, 2006.

[FR Doc. 06–8769
Filed 10–16–06; 11:27 am]
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Federal Register

Vol. 71, No. 200

Tuesday, October 17, 2006

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General Information, indexes and other finding aids	**202–741–6000**
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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
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FEDERAL REGISTER PAGES AND DATE, OCTOBER

57871–58242 2
58243–58480 3
58481–58734 4
58735–59004 5
59005–59360 6
59361–59648 10
59649–60054 11
60055–60412 12
60413–60656 13
60657–60804 16
60805–61372 17

CFR PARTS AFFECTED DURING OCTOBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6641 (See Proc. 8067) 60649
8057 58481
8058 58483
8059 58999
8060 59001
8061 59003
8062 59359
8063 59362
8064 60051
8065 60053
8066 60647
8067 60649
8068 61363
8069 61365

Executive Orders:
13067 (See EO 13412) 61369
13412 61369

7 CFR

58 60805
301 .....57871, 58243, 59649
360 58735
361 58735
920 58246
924 60807
944 60807
955 58249
1218 59363
1421 60413
1427 60413
1792 60657

Proposed Rules:
56 59028
70 59028
305 59694
318 59694
457 60439
1792 60672
2902 59862
3565 58545

8 CFR

1003 57873

9 CFR

77 58252
307 59005
381 59005

10 CFR

72 60659
420 57885
431 60662

Proposed Rules:
2 61330
50 61330
51 61330
52 61330
72 60672
430 .....59204, 58410
431 58308

12 CFR

910 60810
913 60810
951 59262

Proposed Rules:
327 60674
613 60678

13 CFR

Proposed Rules:
120 59411

14 CFR

23 58735
39 .....57887, 58254, 58485, 58487, 58493, 59363, 59366, 59368, 59651, 60414, 60417, 60663
43 58495
71 .....58738, 59006, 59007, 59008, 59372, 60419, 60814, 60815, 60816, 60817, 60818
93 .....58495, 60424
97 58256
125 59373
135 59373

Proposed Rules:
1 58914
21 58914
39 .....58314, 58318, 58320, 58323, 58755, 60080, 60083, 60085, 60087, 60089, 60444, 60446, 60448, 60450, 60924, 60926, 60927
43 58914
45 58914
71 .....58758, 58760, 58761, 58762, 58764, 58765, 59031
331 58546

15 CFR

922 60055

Proposed Rules:
715 59032
716 59032
721 59032
922 .....58767, 59039, 59050, 59338

16 CFR

Proposed Rules:
310 58716

17 CFR

270 58257

Proposed Rules:
4 60454
240 60636

18 CFR

388 58273

Proposed Rules:

35 58767
37 58767
40 57892
388 58325

20 CFR

404 60819
416 60819

21 CFR

189 59653
201 58739
520 59374
606 58739
610 58739
700 59653
1300 ..... 60426, 60609
1309 60609
1310 ..... 60609, 60823
1314 60609

Proposed Rules:

20 57892
25 57892
201 57892
202 57892
207 57892
225 57892
226 57892
500 57892
510 57892
511 57892
515 57892
516 57892
558 57892
589 57892
1312 58569

22 CFR

51 58496
126 58496

Proposed Rules:

22 60928
51 60928

24 CFR

Proposed Rules:

15 58994

25 CFR

Proposed Rules:

292 58769

26 CFR

1 ..... 57888, 59669
31 58276
300 58740
301 ..... 60827, 60835
602 59696

Proposed Rules:

300 59696

28 CFR

16 58277

29 CFR

1915 60843
4022 60428
4044 60428

Proposed Rules:

1915 60932

30 CFR

Proposed Rules:

701 59592
773 59592
774 59592
778 59592
843 59592
847 59592

31 CFR

224 60847
256 60848
594 58742
595 58742
597 58742

32 CFR

283 59009
284 59374
706 58278

Proposed Rules:

143 60092
144 59411

33 CFR

100 ..... 58279, 58281, 60064
117 ..... 58283, 58285, 58286, 58744, 59381

Proposed Rules:

110 58230
117 ..... 58332, 58334, 58776
165 ..... 57893, 60094

36 CFR

Proposed Rules:

Ch. I 59697
242 60095

37 CFR

350 59010
351 59010
370 59010

40 CFR

49 60852
50 ..... 60853, 61144
51 ..... 58498, 60612
52 ..... 58498, 59383, 59674
53 61236
58 61236
59 58745
63 58499
80 58498
81 60429
82 58504
180 ..... 58514, 58518
281 58521
302 58525
355 58525

Proposed Rules:

52 ..... 57894, 57905, 59413, 59414, 59697, 60098, 60934, 60937
63 59302
81 ..... 57894, 57905, 59414, 60937
174 59697
281 58571
721 59066

42 CFR

409 58286
410 58286
412 58286
413 58286
414 58286
424 58286
433 60663
485 58286
489 58286
505 58286

44 CFR

62 60435
65 ..... 59385, 60854
67 ..... 59398, 60864, 60866, 60869, 60870, 60871, 60884, 60917, 60919

Proposed Rules:

67 ..... 60952, 60961, 60963, 60980, 60983, 60985, 60985, 60986, 60988

45 CFR

1310 58533

46 CFR

1 60066

47 CFR

2 ..... 60067, 60075
80 ..... 60067, 60075

Proposed Rules:

80 60102

48 CFR

205 58536
207 58537
212 58537
216 58537
225 ..... 58536, 58537, 58539
234 58537
236 58540
252 58541
5125 60076
5152 60076

Proposed Rules:

30 ..... 58336, 58338
52 ..... 58336, 58338
204 61012
235 61012
252 61012

49 CFR

213 59677
541 59400

Proposed Rules:

211 59698
217 60372
218 60372
591 58572
592 58572
593 58572
594 58572
604 60460
624 60681

50 CFR

17 ..... 58176, 60238
20 58234
300 58058
600 58058
622 ..... 59019, 60076
635 ..... 58058, 58287
648 59020
660 ..... 57889, 58289, 59405
679 ..... 57890, 58753, 59406, 59407, 60077, 60078, 60670

Proposed Rules:

17 ..... 58340, 58363, 58574, 58954, 59700, 59711
100 60095
635 58778
648 61012
660 61012

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT OCTOBER 17, 2006

FEDERAL HOUSING FINANCE BOARD

Privacy Act; implementation; published 10-17-06

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 9-12-06

Honeywell; published 9-12-06

McDonnell Douglas; published 9-12-06

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Judgment Fund and private relief bills; payment rules and procedures; published 10-17-06

Surety corporations; federal process agents; apointments; published 10-17-06

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Return information disclosure by officers and employees for investigative purposes

Correction; published 10-17-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Prunes (dried) produced in California; comments due by 10-23-06; published 9-22-06 [FR 06-07867]

Science and Technology Laboratory Service:

Fees and charges increase; comments due by 10-23-06; published 9-22-06 [FR 06-07821]

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Common crop insurance regulations, basic provisions; and various crop insurance provisions; comments due by 10-26-06; published 9-26-06 [FR 06-08216]

Common crop insurance regulations; basic provisions, and various crop insurance provisions; amendments; comments due by 10-26-06; published 7-14-06 [FR 06-05962]

AGRICULTURE DEPARTMENT

Forest Service

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Nonrural determinations; comments due by 10-27-06; published 8-14-06 [FR 06-06902]

COMMERCE DEPARTMENT

Grants, other financial assistance, and nonprocurement agreements:

OMB guidance on nonprocurement debarment and suspension; implementation; comments due by 10-23-06; published 9-22-06 [FR 06-08022]

COMMERCE DEPARTMENT

Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia

Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

Atka mackerel; comments due by 10-27-06; published 10-12-06 [FR 06-08637]

Northeastern United States fisheries—

Net mesh size measurement method; comments due by 10-26-06; published 9-26-06 [FR 06-08187]

West Coast States and Western Pacific fisheries—

Groundfish; comments due by 10-25-06; published 10-10-06 [FR E6-16676]

CONSUMER PRODUCT SAFETY COMMISSION

Consumer Product Safety Act and Federal Hazardous Substances Act:

Adult all terrain vehicle requirements and three-wheeled all terrain vehicle ban; comments due by 10-24-06; published 8-10-06 [FR 06-06703]

Correction; comments due by 10-24-06; published 9-7-06 [FR E6-14757]

DEFENSE DEPARTMENT

Civilian health and medical program of the uniformed services (CHAMPUS):

TRICARE program—

Reserve and Guard family member benefits; comments due by 10-23-06; published 8-22-06 [FR E6-13720]

Federal Acquisition Regulation (FAR):

Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]

Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Hazardous waste combustors; comments due by 10-23-06; published 9-6-06 [FR 06-07251]

Air programs:

Federally administered emission trading programs; source requirements modification; comments due by 10-23-06; published 8-22-06 [FR 06-06819]

Stratospheric ozone protection—

Fire suppression and explosion protection; ozone-depleting substances; list of substitutes; comments due by 10-27-06; published 9-27-06 [FR E6-15842]

Fire suppression and explosion protection; ozone-depleting substances; list of substitutes; comments due by 10-27-06; published 9-27-06 [FR E6-15831]

Significant New Alternatives Policy Program; motor vehicle air conditioning; list of substitutes; comments due by 10-23-06; published 9-21-06 [FR 06-07967]

Air quality implementation plans; approval and promulgation; various States:

Iowa; comments due by 10-23-06; published 9-22-06 [FR 06-07954]

Wisconsin; comments due by 10-23-06; published 9-22-06 [FR 06-08113]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; comments due by 10-23-06; published 8-23-06 [FR E6-13656]

Dimethenamid; comments due by 10-23-06; published 8-23-06 [FR E6-13660]

Fenpyroximate; comments due by 10-23-06; published 8-23-06 [FR E6-13761]

Kresoxim-methyl; comments due by 10-24-06; published 8-25-06 [FR E6-14165]

Triflumizole; comments due by 10-23-06; published 8-23-06 [FR E6-13659]

Superfund program:

National oil and hazardous substances contingency plan priorities list; comments due by 10-23-06; published 9-22-06 [FR 06-07965]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Missoula Intercarrier Compensation Reform Plan; comments due by 10-25-06; published 9-13-06 [FR E6-15196]

Radio services; special:

Private land mobile services—

Upper 700 MHz guard band licenses; operational, technical, and spectrum requirements; comments due by 10-23-06; published 9-21-06 [FR 06-07912]

Television broadcasting:
Telecommunications Act of 1996; implementation—
Broadcast ownership rules; 2006 quadrennial regulatory review; comments due by 10-23-06; published 9-28-06 [FR 06-08168]

FEDERAL DEPOSIT INSURANCE CORPORATION
Assessments:
Risk differentiation frameworks and base assessment schedule; supplemental notice of initial regulatory flexibility analysis; comments due by 10-26-06; published 10-16-06 [FR 06-08728]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]
Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
North American Free Trade Agreement (NAFTA):
Merchandise processing fee exemption and technical corrections; comments due by 10-23-06; published 8-23-06 [FR E6-13947]

INTERIOR DEPARTMENT
Land Management Bureau
Minerals management:
Commercial Oil Shale Leasing Program; comments due by 10-25-06; published 9-26-06 [FR 06-08198]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Nonrural determinations; comments due by 10-27-06; published 8-14-06 [FR 06-06902]
Endangered and threatened species:
Critical habitat designations—
Catesbaea melanocarpa; comments due by 10-23-06; published 8-22-06 [FR 06-07029]
Shivwits milk-vetch and Holmgren milk-vetch; comments due by 10-26-06; published 9-26-06 [FR 06-08191]
Findings on petitions, etc.—
Island night lizard; comments due by 10-23-06; published 8-22-06 [FR E6-13877]
Migratory bird hunting and conservation stamp (Federal Duck Stamp) contest; regulations revision; comments due by 10-27-06; published 9-27-06 [FR E6-15839]
Migratory birds; revised list; comments due by 10-23-06; published 8-24-06 [FR 06-07001]

LABOR DEPARTMENT
Employment and Training Administration
Trade Adjustment Assistance Program:
Trade adjustment assistance for workers; Workforce Investment Act regulations amended; comments due by 10-24-06; published 8-25-06 [FR 06-07067]

LABOR DEPARTMENT
Mine Safety and Health Administration
Mine Improvement and New Emergency Response Act; implementation:
Assessment of civil penalties; criteria and procedures; comments due by 10-23-06; published 9-8-06 [FR 06-07512]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Approved authentication products and services; purchase requirement; comments due by 10-23-06; published 8-23-06 [FR 06-07088]
Internet Protocol Version 6 requirement; comments due by 10-23-06; published 8-24-06 [FR 06-07126]

NUCLEAR REGULATORY COMMISSION
Special nuclear material; domestic licensing:
Items relied on for safety; facility change process; comments due by 10-27-06; published 9-27-06 [FR 06-08271]

SECURITIES AND EXCHANGE COMMISSION
Securities, etc:
Executive and director compensation, etc.; disclosure requirements; comments due by 10-23-06; published 9-8-06 [FR 06-06968]
Securities:
Transfer agent forms; electronic filing; comments due by 10-26-06; published 9-11-06 [FR 06-07269]
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC. et al.; comments due by 10-27-06; published 10-6-06 [FR E6-16565]
NYSE Arca, Inc.; comments due by 10-24-06; published 10-3-06 [FR E6-16247]

SMALL BUSINESS ADMINISTRATION
Surety Bond Guarantee Program:
Preferred Surety Bond surety qualification, increased guarantee for veterans, etc.; comments due by 10-26-06; published 9-26-06 [FR 06-08205]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; comments due by 10-26-06; published 9-26-06 [FR 06-08222]
Boeing; comments due by 10-23-06; published 9-26-06 [FR 06-08232]
Bombardier; comments due by 10-23-06; published 8-23-06 [FR E6-13831]
EADS SOCATA; comments due by 10-27-06; published 9-27-06 [FR 06-08277]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-26-06; published 9-26-06 [FR 06-08223]
Fokker; comments due by 10-23-06; published 8-22-06 [FR E6-13731]
PZL-Bielsko; comments due by 10-27-06; published 9-27-06 [FR E6-15905]
Airworthiness standards:
Normal and transport category rotorcraft—
Performance and handling qualities requirements; comments due by 10-23-06; published 7-25-06 [FR E6-11726]
Special conditions—
Airbus Model A380-800 airplanes; comments due by 10-23-06; published 9-7-06 [FR E6-14827]
Class D and E airspace; comments due by 10-23-06; published 8-18-06 [FR 06-06910]
VOR Federal airways; comments due by 10-23-06; published 9-6-06 [FR E6-14744]

TRANSPORTATION DEPARTMENT
Federal Railroad Administration
Railroad safety:
Passenger equipment safety standards—
Emergency systems; comments due by 10-23-06; published 8-24-06 [FR 06-07099]

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Vocational Rehabilitation and Employment Program—
Initial evaluations; comments due by 10-27-06; published 8-28-06 [FR E6-14079]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 4109/P.L. 109–327
To designate the facility of the United States Postal Service

located at 6101 Liberty Road in Baltimore, Maryland, as the "United States Representative Parren J. Mitchell Post Office". (Oct. 12, 2006; 120 Stat. 1767)

H.R. 4674/P.L. 109–328

To designate the facility of the United States Postal Service located at 110 North Chestnut Street in Olathe, Kansas, as the "Governor John Anderson, Jr. Post Office Building". (Oct. 12, 2006; 120 Stat. 1768)

H.R. 5224/P.L. 109–329

To designate the facility of the United States Postal Service located at 350 Uinta Drive in Green River, Wyoming, as the "Curt Gowdy Post Office Building". (Oct. 12, 2006; 120 Stat. 1769)

H.R. 5504/P.L. 109–330

To designate the facility of the United States Postal Service located at 6029 Broadmoor Street in Mission, Kansas, as the "Larry Winn, Jr. Post Office Building". (Oct. 12, 2006; 120 Stat. 1770)

H.R. 5546/P.L. 109–331

To designate the United States courthouse to be constructed in Greenville, South Carolina, as the "Carroll A. Campbell, Jr. United States Courthouse". (Oct. 12, 2006; 120 Stat. 1771)

H.R. 5606/P.L. 109–332

To designate the Federal building and United States courthouse located at 221 and 211 West Ferguson Street in Tyler, Texas, as the "William M. Steger Federal Building and United States Courthouse". (Oct. 12, 2006; 120 Stat. 1772)

H.R. 5929/P.L. 109–333

To designate the facility of the United States Postal Service located at 950 Missouri Avenue in East St. Louis, Illinois, as the "Katherine Dunham Post Office Building". (Oct. 12, 2006; 120 Stat. 1773)

H.R. 6033/P.L. 109–334

To designate the facility of the United States Post Service located at 39-25 61st Street in Woodside, New York, as the "Thomas J. Manton Post Office Building". (Oct. 12, 2006; 120 Stat. 1774)

H.R. 6051/P.L. 109–335

To designate the Federal building and United States courthouse located at 2 South Main Street in Akron, Ohio, as the "John F. Seiberling Federal Building and United States Courthouse". (Oct. 12, 2006; 120 Stat. 1775)

H.R. 6075/P.L. 109–336

To designate the facility of the United States Postal Service located at 101 East Gay Street in West Chester, Pennsylvania, as the "Robert J. Thompson Post Office Building". (Oct. 12, 2006; 120 Stat. 1776)

S. 56/P.L. 109–337

Rio Grande Natural Area Act (Oct. 12, 2006; 120 Stat. 1777)

S. 203/P.L. 109–338

National Heritage Areas Act of 2006 (Oct. 12, 2006; 120 Stat. 1783)

Last List October 16, 2006

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