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Presidential Documents

Title 3—

The President

Executive Order 13518 of November 9, 2009

Employment of Veterans in the Federal Government

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby order as follows:

Section 1. *Policy.* Veterans have served and sacrificed in defense of our Nation. When they complete their service, we must do everything in our power to assist them in re-entering civilian life and finding employment. Government as well as private employers should play a prominent role in helping veterans who may be struggling to find jobs. As one of the Nation's leading employers, the Federal Government is in need of highly skilled individuals to meet agency staffing needs and to support mission objectives. Our veterans, who have benefited from training and development during their military service, possess a wide variety of skills and experiences, as well as the motivation for public service, that will help fulfill Federal agencies' staffing needs. It is therefore the policy of my Administration to enhance recruitment of and promote employment opportunities for veterans within the executive branch, consistent with merit system principles and veterans' preferences prescribed by law. The Federal Government will thereby help lead by example in promoting veterans' employment.

Sec. 2. *Council on Veterans Employment.* There is hereby established an interagency Council on Veterans Employment (Council), to be co-chaired by the Secretaries of Labor and Veterans Affairs. The Director of the Office of Personnel Management (OPM) shall serve as Vice Chair of the Council.

(a) Mission and Function of the Council. The Council shall:

(i) advise and assist the President and the Director of OPM in establishing a coordinated Government-wide effort to increase the number of veterans employed by the Federal Government by enhancing recruitment and training;

(ii) serve as a national forum for promoting veterans' employment opportunities in the executive branch; and

(iii) establish performance measures to assess the effectiveness of, and submit an annual report to the President on the status of, the Veterans Employment Initiative described in section 3 of this order.

(b) Membership of the Council. The Council shall consist of the heads of the following agencies and such other executive branch agencies as the President may designate:

(i) the Department of State;

(ii) the Department of the Treasury;

(iii) the Department of Defense;

(iv) the Department of Justice;

(v) the Department of the Interior;

(vi) the Department of Agriculture;

(vii) the Department of Commerce;

(viii) the Department of Labor;

(ix) the Department of Health and Human Services;

(x) the Department of Housing and Urban Development;

(xi) the Department of Transportation;

(xii) the Department of Energy;

(xiii) the Department of Education;

(xiv) the Department of Veterans Affairs;

(xv) the Department of Homeland Security;

(xvi) the Environmental Protection Agency;

(xvii) the National Aeronautics and Space Administration;

(xviii) the Agency for International Development;

(xix) the General Services Administration;

(xx) the National Science Foundation;

(xxi) the Nuclear Regulatory Commission;

(xxii) the Office of Personnel Management;

(xxiii) the Small Business Administration; and

(xxiv) the Social Security Administration.

A member of the Council may designate, to perform the Council functions of the member, a senior official who is part of the member's agency, and who is a full-time officer or employee of the Federal Government.

(c) Administration of the Council. The Co-Chairs shall convene meetings of the Council, determine its agenda, and direct its work. At the direction of the Co-Chairs, the Council may establish subgroups consisting exclusively of Council members or their designees, as appropriate. The Vice Chair shall designate an Executive Director for the Council to support the Vice Chair in managing the Council's activities. The OPM shall provide administrative support for the Council to the extent permitted by law and within existing appropriations.

(d) Steering Committee. There is established within the Council a Steering Committee consisting of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security, the Director of OPM, and any other Council member designated by the Co-Chairs. The Steering Committee shall be responsible for providing leadership, accountability, and strategic direction to the Council.

Sec. 3. *Veterans Employment Initiative.* The agencies represented on the Council shall participate in a Veterans Employment Initiative (Initiative). Under the Initiative, each participating agency shall, to the extent permitted by law:

(a) develop an agency-specific Operational Plan for promoting employment opportunities for veterans, consistent with the Government-wide Veterans Recruitment and Employment Strategic Plan described in section 4 of this order, merit system principles, the agency's strategic human capital plan, and other applicable workforce planning strategies and initiatives;

(b) within 120 days of the date of this order, establish a Veterans Employment Program Office, or designate an agency officer or employee with full-time responsibility for its Veterans Employment Program, to be responsible for enhancing employment opportunities for veterans within the agency, consistent with law and merit system principles, including developing and implementing the agency's Operational Plan, veterans recruitment programs, and training programs for veterans with disabilities, and for coordinating employment counseling to help match the career aspirations of veterans to the needs of the agency;

(c) provide mandatory annual training to agency human resources personnel and hiring managers concerning veterans' employment, including training on veterans' preferences and special authorities for the hiring of veterans;

(d) identify key occupations for which the agency will provide job counseling and training to better enable veterans to meet agency staffing needs associated with those occupations; and

(e) coordinate with the Departments of Defense and Veterans Affairs to promote further development and application of technology designed to assist transitioning service members and veterans with disabilities.

Sec. 4. *Additional Responsibilities of the Director of the Office of Personnel Management.* The Director of OPM shall, in consultation with the Council and to the extent permitted by law:

(a) develop a Government-wide Veterans Recruitment and Employment Strategic Plan, to be updated at least every 3 years, addressing barriers to the employment of veterans in the executive branch and focusing on:

(i) identifying actions that agency leaders should take to improve employment opportunities for veterans;

(ii) developing the skills of transitioning military service members and veterans;

(iii) marketing the Federal Government as an employer of choice to transitioning service members and veterans;

(iv) marketing the talent, experience, and dedication of transitioning service members and veterans to Federal agencies; and

(v) disseminating Federal employment information to veterans and hiring officials;

(b) provide Government-wide leadership in recruitment and employment of veterans in the executive branch;

(c) identify key occupations, focusing on positions in high-demand occupations where talent is needed to meet Government-wide staffing needs, for which the Federal Government will provide job counseling and training under section 5(a) of this order to veterans and transitioning military service personnel;

(d) develop mandatory training for both human resources personnel and hiring managers on veterans' employment, including veterans' preference and special hiring authorities;

(e) compile and post on the OPM website Government-wide statistics on the hiring of veterans; and

(f) within 1 year of the date of this order and with the advice of the Council, provide recommendations to the President on improving the ability of veterans' preference laws to meet the needs of the new generation of veterans, especially those transitioning from the conflicts in Iraq and Afghanistan, and the needs of Federal hiring officials.

Sec. 5. *Responsibilities of the Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security.* The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall take the following actions, to the extent permitted by law:

(a) The Secretaries of Defense, Labor, Veterans Affairs, and Homeland Security shall, in consultation with OPM, develop and implement counseling and training programs to align veterans' and transitioning service members' skills and career aspirations to Federal employment opportunities, targeting Federal occupations that are projected to have heavy recruitment needs.

(b) The Secretary of Labor shall conduct employment workshops for veterans and transitioning military service personnel as part of the Transition Assistance Program (TAP), and integrate in those workshops information about the Federal hiring process, veterans' preference laws, special hiring authorities, and Federal job opportunities.

(c) The Secretary of Defense and Secretary of Homeland Security (with respect to the Coast Guard) shall:

(i) reinforce military leadership's commitment and support of the service members' transition process; and

(ii) institute policies that encourage every eligible service member to take the opportunity to enroll in any or all of the four components of the TAP.

(d) The Secretaries of Labor and Veterans Affairs shall:

(i) assist veterans and transitioning service members in translating military skills, training, and education to Federal occupations through programs developed under subsection (a) of this section; and

(ii) provide training to employment and rehabilitation counselors on the Federal hiring process, veterans' preferences, special hiring authorities, and identifying Federal employment opportunities for veterans.

Sec. 6. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department or agency or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
November 9, 2009.

[FR Doc. E9–27441
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Rules and Regulations

Federal Register

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Friday, November 13, 2009

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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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1376]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; technical amendment.

SUMMARY: The Board of Governors (Board) is amending the routing number guide to next-day availability checks and local checks in Regulation CC to delete the reference to the head office of the Federal Reserve Bank of Philadelphia and to reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland. These amendments reflect the restructuring of check-processing operations within the Federal Reserve System.

DATES: The final rule will become effective on December 12, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. H. Yeganeh, Financial Services Manager (202/728–5801), or Joseph P. Baressi, Financial Services Project Leader (202/452–3959), Division of Reserve Bank Operations and Payment Systems; or Dena L. Milligan, Attorney (202/452–3900), Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a ''local check'' than by a ''nonlocal check.'' A check is considered local if it is payable by or at or through a bank located in the same Federal Reserve check-processing region as the depositary bank.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check-processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office for check-processing purposes. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check-processing region and thus are local to one another.

On December 12, 2009, the Reserve Banks will transfer the check-processing operations of the head office of the Federal Reserve Bank of Philadelphia to the head office of the Federal Reserve Bank of Cleveland. As a result of this change, some checks that are drawn on and deposited at banks located in the Philadelphia and Cleveland check-processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules. To assist banks in identifying local and nonlocal checks and making funds availability decisions, the Board is amending the lists of routing symbols in appendix A associated with the Federal Reserve Banks of Philadelphia and Cleveland to reflect the transfer of check-processing operations from the head office of the Federal Reserve Bank of Philadelphia to the head office of the Federal Reserve Bank of Cleveland. To coincide with the effective date of the underlying check-processing changes, the amendments to appendix A are effective December 12, 2009. The Board is providing notice of the amendments at this time to give affected banks ample time to make any needed processing changes. Early notice also will enable affected banks to amend their availability schedules and related disclosures if necessary and provide their customers with notice of these changes.[2]

Administrative Procedure Act

The public comment requirements of section 553(b) of the Administrative Procedure Act do not apply to these amendments to Appendix A of Regulation CC because the amendments involve matters of agency organization. The Monetary Control Act requires cost recovery for Federal Reserve Bank priced services over the long term, which from time to time necessitates changes in the internal organization of Reserve Bank services in order to meet the statutory mandate. The rapid decline in paper check volumes, generally, and the decline in paper checks sent to the Reserve Banks for collection have significantly reduced the need for Federal Reserve check-processing locations and the ability of Reserve Banks to recover the costs of maintaining those locations. In order to achieve the Monetary Control Act requirement of long-run full cost recovery, the Reserve Banks have adjusted their check service infrastructure to reduce the number of check-processing regions. In light of the fact that the Reserve Banks are receiving a high percentage of checks electronically, the consolidation of check processing centers and the accompanying amendments to Appendix A of Regulation CC are required by law. As a result of the consolidation of Federal Reserve check-processing offices, amendments to Appendix A are necessary because the statutory and regulatory terms ''local'' and ''nonlocal'' are defined in terms of ''check-processing regions''—the geographic areas served by a Federal Reserve check-processing office.

In addition, the Board finds, in accordance with APA section 553(d), good cause for making the amendments to Appendix A relating to the transfer of check-processing operations from Philadelphia to Cleveland effective without 30 days advance publication. On October 14, 2009, the Federal Reserve Banks, by letter, informed depository institutions within Philadelphia's check-processing region of the December 12 transfer of check-

[1] For purposes of Regulation CC, the term ''bank'' refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

processing operations from Philadelphia to Cleveland. That letter was then published on the Federal Reserve Financial Services' website. Accordingly, the affected depository institutions are aware of and making preparations for the transfer of paper check-processing operations from Philadelphia to Cleveland.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board has reviewed the final rule under authority delegated to the Board by the Office of Management and Budget. The technical amendments to appendix A of Regulation CC will delete the reference to the head office of the Federal Reserve Bank of Philadelphia and reassign the routing symbols listed under that office to the head office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check-processing regions and that include the routing numbers in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, all paperwork collection procedures associated with Regulation CC already are in place, and the Board accordingly anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001–4010, 12 U.S.C. 5001–5018.

■ 2. In appendix A, remove introductory paragraph C and the headings and listings for the Third Federal Reserve District, and revise the listing for the Fourth Federal Reserve District to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

[1] 0110	2110
0111	2111
0112	2112
0113	2113
0114	2114
0115	2115
0116	2116
0117	2117
0118	2118
0119	2119
0210	2210
0211	2211
0212	2212
0213	2213
0214	2214
0215	2215
0216	2216
0219	2219
0220	2220
0223	2223
0260	2260
0280	2280
0310	2310
0311	2311
0312	2312
0313	2313
0319	2319
0360	2360
0410	2410
0412	2412
0420	2420
0421	2421
0422	2422
0423	2423
0430	2430
0432	2432
0433	2433
0434	2434
0440	2440
0441	2441
0442	2442
0510	2510
0514	2514
0515	2515
0519	2519
0520	2520
0521	2521
0522	2522
0540	2540
0550	2550
0560	2560
0570	2570
0710	2710
0711	2711
0712	2712
0719	2719
0720	2720
0724	2724
0730	2730
0739	2739
0740	2740
0749	2749
0750	2750
0759	2759
0813	2813
0830	2830
0839	2839
0863	2863
0910	2910
0911	2911
0912	2912
0913	2913
0914	2914
0915	2915
0918	2918
0919	2919
0920	2920
0921	2921
0929	2929
0960	2960
1010	3010
1011	3011
1012	3012
1019	3019
1020	3020
1021	3021
1022	3022
1023	3023
1030	3030
1031	3031
1039	3039
1040	3040
1041	3041
1049	3049
1070	3070
1110	3110
1111	3111
1113	3113
1119	3119
1120	3120
1122	3122
1123	3123
1130	3130
1131	3131
1140	3140
1149	3149
1163	3163
1210	3210
1211	3211
1212	3212
1213	3213
1220	3220
1221	3221
1222	3222
1223	3223
1224	3224
1230	3230
1231	3231
1232	3232
1233	3233
1240	3240
1241	3241
1242	3242
1243	3243
1250	3250
1251	3251
1252	3252

[1] The first two digits identify the bank's Federal Reserve District. For example, 01 identifies the First Federal Reserve District (Boston), and 12 identifies the Twelfth District (San Francisco). Adding 2 to the first digit denotes a thrift institution. For example, 21 identifies a thrift in the First District, and 32 denotes a thrift in the Twelfth District.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, November 6, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–27189 Filed 11–12–09; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD; Amendment 39–16086; AD 2009–23–12]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are revising an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger. * * *

This revision has been released to clarify the applicability.

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective December 18, 2009.

As of July 9, 2009 (74 FR 29126, June 19, 2009), the Director of the Federal Register approved the incorporation by reference of page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH), listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on September 2, 2009 (74 FR 45391), and proposed to revise AD 2009–13–05, Amendment 39–15944 (74 FR 29126, June 19, 2009). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states that:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

This revision has been released to clarify the applicability.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification has been released, this AD is expected to be revised to confirm the acceptability of that modification.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 147 products of U.S. registry. We also estimate that it will take about 0.5 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $5,880, or $40 per product.

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 determined that this AD will not have federalism implications under Executive Order 13132. This AD will 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 this AD:

(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) 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 AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is 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, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 removing Amendment 39–15944 (74 FR 29126, June 19, 2009) and adding the following new AD:

2009–23–12 SOCATA: Amendment 39–16086; Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 18, 2009.

Affected ADs

(b) This AD revises AD 2009–13–05, Amendment 39–15944.

Applicability

(c) This AD applies to the following model and serial number airplanes that are:

(i) certificated in any category; and

(ii) equipped with a chemical oxygen generation system.

Model	Serial Nos.
TBM 700	1 through 204, 206 through 239, and 241 through 243.

Subject

(d) Air Transport Association of America (ATA) Code 35: Oxygen.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression, to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

This revision has been released to clarify the applicability.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification has been released, this AD is expected to be revised to confirm the acceptability of that modification.

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Before further flight after July 9, 2009 (the effective date retained from AD 2009–13–05), insert Page 3.13.5 of Temporary Revision No. 3, dated March 2009, into the Emergency Procedures section and the Limitations section of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) Under 14 CFR section 43.7 of the Federal Aviation Administration Regulations (14 CFR 43.7), the owner/operator holding at least a private pilot certificate is allowed to insert the temporary revision into the POH. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Material Incorporated by Reference

(h) You must use page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH), to do the actions required by this AD, unless the AD specifies otherwise.

(1) On July 9, 2009 (74 FR 29126, June 19, 2009), the Director of the Federal Register previously approved the incorporation by reference of page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) For service information identified in this AD, contact SOCATA, 65921—TARBES Cedex 9, France; *telephone:* +33 6 07 32 62 24; or SOCATA, North Perry Airport, 7501 South Airport Rd., Pembrokes Pines, FL 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://mysocata.com.*

(3) You may review copies of the service information incorporated by reference for this AD at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the Central Region, call (816) 329–3768.

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on November 6, 2009.

Margaret Kline,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–27321 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the United States and District of Columbia Codes

AGENCY: United States Parole Commission, Department of Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is establishing an administrative remedy

that responds to a Federal district court decision which finds that, for some District of Columbia prisoners, the Commission's use of parole guidelines it promulgated in 2000 may significantly risk an increase of their punishment in violation of the Ex Post Facto Clause of the Constitution. Under the remedial plan, the Commission will schedule new parole hearings for those prisoners who meet the plan's eligibility criteria, unless the Commission grants the prisoner a parole effective date on the record. In conducting the new consideration, the Commission will apply the parole guidelines of the former District of Columbia Board of Parole that were promulgated in March 1985.

DATES: *Effective Date:* November 13, 2009.

FOR FURTHER INFORMATION CONTACT: Rockne Chickinell, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959. Questions about this publication are welcome, but inquiries concerning individual cases cannot be answered over the telephone.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Parole Commission is responsible for making parole release decisions for District of Columbia felony offenders who are eligible for parole. DC Code 24–131(a)(1). The Commission took over this responsibility from the District of Columbia Board of Parole (hereinafter ''Board'') on August 5, 1998 as a result of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33). In fulfilling this duty, the Commission must follow the parole laws and regulations of the District of Columbia. DC Code 24–131(c). However, the Commission was granted the exclusive authority to amend any regulation governing the parole release function. DC Code 24–131(a)(1). In July 1998, the Commission promulgated regulations to implement its new duties, including paroling policy guidelines at 28 CFR 2.80. 63 FR 39172–83 (July 21, 1998). In developing these guidelines, the Commission used the basic approach and format of the paroling guidelines promulgated by the Board in March 1985 and published in May 1987, but made modifications to these guidelines to incorporate factors that had led the Board to depart from the guidelines. 63 FR 39172–74. In July 2000, the Commission amended the § 2.80 guidelines, creating suggested ranges of months to be served based on the pre- and post-incarceration factors evaluated under the guidelines, which in turn allowed the Commission to extend presumptive parole dates to prisoners up to three years from the hearing date. 65 FR 45885–45903 (July 26, 2000) (hereinafter the ''2000 Commission guidelines''). Effective August 5, 2000, the Board was abolished. 47 DC Reg. 8669 (Oct. 27, 2000).

Also in 2000, the U.S. Supreme Court decided the case of *Garner* v. *Jones,* 529 U.S. 244 (2000), and indicated in the opinion that parole rules that allow for the use of discretionary judgment may come within the proscription of the Ex Post Facto Clause of the Constitution. For over twenty years, federal appellate courts had rejected claims that the Commission's use of discretionary guidelines for parole release decisions violated the constitutional ban against ex post facto laws. As a result of the Supreme Court's decision in *Garner,* the U.S. Court of Appeals for the District of Columbia Circuit held that parole release guidelines may constitute laws that are covered by the Ex Post Facto Clause. *Fletcher* v. *District of Columbia,* 391 F.3d 250 (DC Cir. 2004) (*Fletcher II*). Following upon the *Fletcher II* decision and the decision in *Fletcher* v. *Reilly,* 433 F.3d 867 (DC Cir. 2006) (*Fletcher III*), the U.S. District Court for the District of Columbia (Huvelle, District Judge) held that the Commission's application of the 2000 Commission guidelines for several DC Code prisoners violated the Ex Post Facto Clause. *Sellmon* v. *Reilly,* 551 F.Supp.2d 66 (D. DC 2008). Several other prisoner-plaintiffs were denied relief by the district court. The court ordered that the Commission conduct new parole hearings for the successful plaintiffs, using the 1987 Board guidelines, instead of the 2000 Commission guidelines. The Justice Department ultimately decided to withdraw its appeal of the district court's order regarding the successful plaintiffs. Several of the unsuccessful plaintiffs appealed to the U.S. Court of Appeals for the District of Columbia Circuit and these cases are still pending. While the *Sellmon* decision only requires new hearings for the successful plaintiffs in that case, the Commission concluded that the cost and burden of future litigation compelled a reassessment of its position and the establishment of an administrative remedy to avoid continued ex post facto challenges to its parole determinations for DC prisoners.

Discussion of the Rule and Public Comment

Effective August 17, 2009, the Commission promulgated an interim rule allowing some DC prisoners to receive new parole determinations using the 1987 Board guidelines. *See* 74 FR 34688–90 (July 17, 2009). Before and after the publication of the interim rule, the Commission sought and received public comment on the proposed plan, as discussed below. The Commission adopted the following criteria for eligibility under the remedial plan: (1) The DC prisoner committed the crime after March 3, 1985 and before August 5, 1998; (2) the prisoner received an initial hearing after August 4, 1998 and therefore has not been considered for parole under the 1987 Board guidelines; (3) the prisoner is not incarcerated on a parole revocation; and (4) the prisoner does not have a parole effective date, or a presumptive parole date before January 1, 2010. The Commission has retained these criteria for eligibility in the final rule. The Commission has modified the interim rule to remove a requirement that an eligible prisoner apply for the consideration under the 1987 Board guidelines. An eligible prisoner who waives consideration under the 1987 Board guidelines will not be heard for parole under these guidelines.

At a record review or hearing under the remedial plan, the hearing examiner will evaluate the prisoner for parole using the 1987 Board guidelines. The ''1987 Board guidelines'' include the Board's version of the salient factor score, the calculation of points for pre- and post-incarceration factors, the point assignment grid, the decisions indicated by the prisoner's point score (also known as the ''grid score''), and the reasons for departing from the guidelines listed in the decision worksheet at Appendix 2–1 of the Board's 1987 rules. Because the suggested reasons include the term ''other,'' the Commission may use a reason not listed in the worksheet in making departures from the guidelines.

A 1991 Board policy guideline provides definitions of terms used in scoring post-incarceration factors of the 1987 Board guidelines (''negative institutional behavior'' and ''sustained program or work assignment achievement''), and in giving reasons for departing from the outcome indicated by the guidelines point score (*e.g.,* ''unusually extensive or serious prior record''). For prisoners who committed their crimes while this policy guideline was in effect (from December 16, 1991 to October 23, 1995), the Commission

will use the definitions given in the 1991 policy guideline for scoring negative behavior or sustained achievement, and the departure reasons that have been identified by the Board in its rules and the policy guideline. But again, the Commission may rely on ''other'' reasons for departing from the guidelines, reasons not listed in the rules and the policy statement. However, as a result of the *Sellmon* litigation, the Commission will not depart from the guidelines for the reason that the prisoner has not served a sufficient prison term to be ''accountable'' for the crime, or because the prisoner's release would depreciate the seriousness of the offense.

The remedial hearing will be conducted using the 1987 Board guidelines for making a release decision at an initial hearing. If the prisoner has already had a rehearing or has already served a sufficient period of time to come up for a rehearing, the hearing examiner will then apply the Board guidelines for a rehearing decision. The Commission modified the interim rule to simplify a direction concerning application of the rehearing guidelines. If the Commission has granted the prisoner a presumptive parole date under the 2000 Commission guidelines, the Commission will not rescind the presumptive date unless one of the accepted bases for such action exists, *i.e.,* new criminal conduct, new institutional misconduct, or new adverse information. The final rule also provides that the Commission may set a presumptive parole date for a prisoner who is considered under the remedial plan if the Commission determines that the prisoner needs to successfully complete a treatment program to reduce the risk that release would pose to the community, and the prisoner's eligibility for entry into the program includes an expected release date within a certain number of months or years. In these cases, the Commission may grant the presumptive parole date on the condition that the prisoner successfully completes the particular treatment program. The Commission may rescind the presumptive date if the prisoner fails in the program or if one of the other accepted bases for rescission of a presumptive date are present.

At the May 14, 2009, business meeting, the Commission received written and oral comments from interested organizations on a proposed remedial plan. The comments came from representatives of the District of Columbia Public Defender Service, the Washington Lawyers' Committee on Civil Rights and Urban Affairs (hereinafter ''Lawyers' Committee''), the attorney who represented the plaintiffs in the *Sellmon* case, and the U.S. Attorney's Office for the District of Columbia. Several commenters questioned the plan's eligibility criteria, especially the limitation regarding offenders who committed their crimes before the Board's guidelines became effective on March 4, 1985. In their view, the Commission should apply the 1987 Board guidelines to those offenders as well as offenders who committed their crimes when these guidelines were in effect. Concerns were also expressed regarding the proposal's allowance that the Commission be able to depart from the Board's guidelines for reasons ''other'' than those listed in the Board's regulations and policy guidelines.

The Lawyers' Committee reiterated these concerns in its written comments to the Commission's promulgation of the interim rule. In its comments, the Lawyers' Committee asserted that the Commission should: (1) Establish a clear and short time line for completing the hearings and reviews under the new policy; (2) limit itself to the reasons for guideline departures specifically listed by the Board in its rules and policy guidelines; (3) ensure that offenders who were heard under the 2000 Commission guidelines would continue to be considered under the 1987 Board guidelines; and (4) extend the use of the 1987 Board guidelines to all D.C. Code offenders regardless of the date of the offense. The Lawyers' Committee provided the only substantive comments to the Commission's interim rule.

With respect to the first assertion, the Commission initially set a goal of completing the hearings and reviews by January 31, 2010. At the October 6, 2009 Commission business meeting, the representative from the Lawyers' Committee questioned whether this deadline was realistic considering the resources that the Commission could devote to the project. The Commission estimates that approximately 550 prisoners are eligible for consideration under the plan. The Commission has begun reviewing these cases on the record and has completed over 100 record reviews. Beginning this month the Commission will conduct 19 special hearing dockets at various institutions to apply the 1987 Board guidelines to eligible prisoners. Based on its experience so far, combined with changes from the original staffing plan, the Commission has revised the goal for completion of the project to March 31, 2010.

On the second assertion, the Commission has concluded that it has the authority to use ''other'' reasons to depart from the guidelines. The district judge in *Sellmon* took a contrary view. The Commission respectfully disagrees with the district court's decision on this point and finds support for its position in the Board's paper on the development of the 1987 guidelines, the Board's 1992 policy guideline on making decisions on rehearing dates, and case precedent from the U.S. Court of Appeals for the DC Circuit. The Commission's authority to release a prisoner on parole is dependent on satisfaction of the statutory criteria, *i.e.,* that there is a reasonable probability that the prisoner will live and remain at liberty without violating the law, and that the prisoner's release is not incompatible with the welfare of society. The Board was not free to make release decisions in violation of the statutory criteria, whether by policy or by a decision in an individual case, and neither is the Commission. The clear majority of the cases reviewed by the Commission so far under the interim rule are prisoners who have committed crimes of extreme violence: murder, manslaughter, and sexual assault. The Commission expects that many of the remaining prisoners eligible for consideration under the plan have committed crimes of a similar nature, given the dates of their crimes, the length of their sentences, and time served to date. Some of these prisoners will be paroled under the 1987 Board guidelines as long as the Commission determines that their release would not endanger the public and would be compatible with the public welfare. But if, after a conscientious examination of the record, the Commission decides that the prisoner's release would pose an unreasonable risk to the public, the Commission will depart from the guidelines and deny parole to meet its statutory obligation.

Regarding the third assertion, the Commission will apply the 1987 Board guidelines to eligible prisoners in the special hearings and record reviews, and at every future parole determination proceeding held for such a prisoner, whichever set of guidelines were used in past considerations. The Commission will not revert to using the 2000 Commission guidelines at a later parole hearing after a parole proceeding under the 1987 Board guidelines. Finally, on the fourth assertion, as the Lawyers' Committee notes in its comments, the DC Circuit is presently considering an appeal from a *Sellmon* plaintiff who was denied relief on the claim that the

Commission should have used the 1987 Board guidelines in his case even though he committed his crime before these guidelines were in effect. The Commission will await the decision of the circuit before considering any amendment of the rule to expand the coverage of the rule beyond the present limit set on the basis of the offense date. The 1987 Board guidelines were in effect from March 4, 1985 through August 4, 1998, and the Commission will continue to apply the remedial plan only to a DC prisoner who committed his crime in this period.

Implementation

This final rule shall apply to any DC prisoner eligible under the terms of the rule for a hearing using the 1987 Board guidelines. The Commission will begin special hearing dockets to carry out the remedial plan in November 2009 and end the special dockets by March 31, 2010. The Commission will consider extending the special dockets beyond March 2010 for demonstrated need. If eligible prisoners are scheduled for hearings on regular dockets during the period from November 2009 to March 2010, these eligible prisoners shall be considered for parole using the 1987 Board guidelines. If an eligible prisoner comes up for a hearing after the special dockets are concluded, the prisoner shall be considered for parole using the 1987 Board guidelines. An eligible prisoner who is denied parole after consideration under the 1987 Board guidelines shall continue to be considered for parole under these guidelines until released as a result of a parole or accumulation of good time credits.

Good Cause Finding

The Commission finds that there is good cause to make this final rule effective before the expiration of 30 days from the date of publication. *See* 5 U.S.C. 553(d)(3). The plan described in this rule was the subject of public comment from May-September 2009, and has been implemented as an interim rule since August 17, 2009. There are no significant changes in the final rule from the interim rule. Delaying the effective date of the rule is not necessary to prepare correctional or supervision agencies for the workload caused by implementation of the rule. Delaying the effective date would arguably expose the Commission to continued litigation over the subject of the final rule.

Executive Order 12866

The U.S. Parole Commission has determined that this final rule does not constitute a significant rule within the meaning of Executive Order 12866.

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. Under Executive Order 13132, this rule does not have sufficient federalism implications requiring a Federalism Assessment.

Regulatory Flexibility Act

The final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that does not substantially affect the rights or obligations of non-agency parties pursuant to Section 804(3)(c) of the Congressional Review Act.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local, or tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. No action under the Unfunded Mandates Reform Act of 1995 is necessary.

Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)

This rule is not a ''major rule'' as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996 Subtitle E-Congressional Review Act), now codified at 5 U.S.C. 804(2). The rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on the ability of United States-based companies to compete with foreign-based companies. Moreover, this is a rule of agency practice or procedure that does not substantially affect the rights or obligations of non-agency parties, and does not come within the meaning of the term ''rule'' as used in Section 804(3)(C), now codified at 5 U.S.C. 804(3)(C). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 2

Administrative practice and procedure, Prisoners, Probation and Parole.

The Final Rule

■ Accordingly, the U.S. Parole Commission is adopting the following amendment to 28 CFR Part 2.

PART 2—[AMENDED]

■ 1. The authority citation for 28 CFR Part 2 continues to read as follows:

Authority: 18 U.S.C. 4203(a)(1) and 4204(a)(6).

■ 2. Amend § 2.80 by revising paragraph (o) to read as follows:

§ 2.80 Guidelines for DC Code offenders.

* * * * *

(o) (1) A prisoner who is eligible under the criteria of paragraph (o)(2) may receive a parole determination using the 1987 guidelines of the former District of Columbia Board of Parole (hereinafter ''the 1987 Board guidelines'').

(2) A prisoner must satisfy the following criteria to obtain a determination using the 1987 Board guidelines:

(i) The prisoner committed the offense of conviction after March 3, 1985 and before August 5, 1998;

(ii) The prisoner is not incarcerated as a parole violator;

(iii) The prisoner received his initial hearing after August 4, 1998; and

(iv) The prisoner does not have a parole effective date, or a presumptive parole date before January 1, 2010.

(3) For a prisoner eligible for application of the 1987 Board guidelines, a hearing examiner shall first review the case on the record. If the hearing examiner recommends that the prisoner receive a parole effective date and the Commission concurs in the recommendation, the case shall not be scheduled for a hearing. If the hearing examiner does not recommend a parole effective date, a hearing shall be conducted on an appropriate hearing docket.

(4) At the hearing, the hearing examiner shall evaluate the prisoner's case using the 1987 Board guidelines, as if the prisoner were receiving an initial hearing. If appropriate, the hearing examiner shall evaluate the case using the 1987 Board guidelines for rehearings, revising the initial point score based on the prisoner's prison conduct record and program performance. The Commission shall use the former Board's policy guidelines in making its determinations under this paragraph, according to the policy guideline in effect at the time of the prisoner's offense.

(5) If the Commission denies parole after the hearing, and the prisoner

received a presumptive parole date under the parole determination that preceded the hearing under this paragraph, the prisoner shall not forfeit the presumptive parole date unless the presumptive date is rescinded for institutional misconduct, new criminal conduct, or for new adverse information.

(6) Decisions resulting from hearings under this paragraph may not be appealed to the Commission.

Dated: November 6, 2009.

Isaac Fulwood,

Chairman, United States Parole Commission.

[FR Doc. E9–27308 Filed 11–12–09; 8:45 am]

BILLING CODE 4410–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

Benefits Payable in Terminated Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in December 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective December 1, 2009.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Manager, Regulatory and Policy Division, Legislative and Regulatory Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

These interest assumptions are found in two PBGC regulations: the regulation on Benefits Payable in Terminated Single-Employer Plans (29 CFR Part 4022) and the regulation on Allocation of Assets in Single-Employer Plans (29 CFR Part 4044). Assumptions under the asset allocation regulation are updated quarterly; assumptions under the benefit payments regulation are updated monthly. This final rule updates only the assumptions under the benefit payments regulation.

Two sets of interest assumptions are prescribed under the benefit payments regulation: (1) A set for PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by PBGC (found in Appendix B to Part 4022), and (2) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology (found in Appendix C to Part 4022).

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during December 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during December 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 2.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. In comparison with the interest assumptions in effect for November 2009, these interest assumptions represent an increase of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect current market conditions as accurately as possible.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during December 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE–EMPLOYER PLANS

■ 1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

■ 2. In appendix B to part 4022, Rate Set 194, as set forth below, is added to the table.

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
194	12–1–09	1–1–10	2.50	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 194, as set forth below, is added to the table.

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
194	12–1–09	1–1–10	2.50	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 5th day of November 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–27221 Filed 11–12–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0942]

RIN 1625–AA11

Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone and regulated navigation area on the Chicago Sanitary and Ship Canal near Romeoville, IL. This temporary final rule places navigational and operational restrictions on all vessels transiting the navigable waters located adjacent to and over the U.S. Army Corps of Engineers' (USACE) electrical dispersal fish barrier system.

DATES: This temporary final rule is effective from 5 p.m. on November 13, 2009, until 5 p.m. on November 20, 2009. This temporary final rule is enforceable with actual notice by Coast Guard personnel beginning October 16, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0942 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0942 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call CDR Tim Cummins, Deputy Prevention Division, Ninth Coast Guard District, telephone 216–902–6045. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the U.S. Army Corps of Engineers (USACE) made the decision, without time for a proper notice period, to permanently increase the voltage of the fish barrier to two-volts per inch in response to data which indicates that Asian carp are closer to the Great Lakes waterway system than originally thought. The electric current in the water created by the electrical dispersal barriers coupled with the uncertainty of the effects of the increased voltage poses a safety risk to commercial vessels and recreational boaters who transit the area. Therefore, it would be against the public interest to delay the issuing of this rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because of the safety risk to commercial vessels and recreational boaters who transit the area. The following discussion and the Background and Purpose section below provide additional support of the Coast Guard's determination that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication.

In 2002, the USACE energized a demonstration electrical dispersal barrier located in the Chicago Sanitary and Ship Canal. The demonstration barrier, commonly referred to as ''Barrier I,'' generates a low-voltage electric field (one-volt per inch) across the canal, which connects the Illinois River to Lake Michigan. Barrier I was built to block the passage of aquatic nuisance species, such as Asian carp, and prevent them from moving between the Mississippi River basin and Great Lakes via the canal. In 2006, the USACE completed construction of a new barrier, ''Barrier IIA.'' Because of its design, Barrier IIA can generate a more powerful electric field (up to four-volts per inch), over a larger area within the Chicago Sanitary and Ship Canal, than Barrier I. Testing was conducted by the USACE which indicated that two-volts per inch is the optimal voltage to deter aquatic nuisance species. The USACE's original plan was to perform testing on the effects of the increased voltage on vessels passing through the fish barrier prior to permanently increasing the voltage. However, after receiving data that the Asian carp were closer to the Great Lakes than expected, the decision was made to immediately energize the barrier to two-volts per inch without prior testing.

A comprehensive, independent analysis of Barrier IIA, conducted in 2008 by the USACE at the one-volt per inch level, found a serious risk of injury or death to persons immersed in the water located adjacent to and over the barrier. Additionally, sparking between barges transiting the barrier (a risk to flammable cargoes) occurred at the one-volt per inch level. The Coast Guard and USACE developed regulations and safety guidelines, with stakeholder

input, which addressed the risks and hazards associated with operating the barriers at the one-volt per inch level. These regulations were published in 33 CFR 165.923, 70 FR 76692 (Dec 28, 2005) and in a series of temporary final rules: 71 FR 4488 (Jan 27, 2006); 71 FR 19648 (Apr 17, 2006); 73 FR 33337 (Jun 12, 2008); 73 FR 37810 (Jul 2, 2008); 73 FR 45875 (Aug 7, 2008); and 73 FR 63633 (Oct 27, 2008). A temporary interim rule was issued on February 9, 2009 (74 FR 6352). Finally, an NPRM was issued on May 26, 2009 (74 FR 24722).

In early August, 2009, the USACE notified the Coast Guard that it planned to immediately increase the voltage of Barrier IIA to two-volts per inch on a full-time basis starting August 17, 2009. Both Barrier IIA and Barrier I will operate at the same time; hence, Barrier I will provide a redundant back up to Barrier IIA.

In the past, the Coast Guard has advised the USACE that it has no objection to the activation of Barrier IIA and Barrier I at a maximum strength of one-volt per inch. Testing on commercial vessels transiting the canal over the fish barrier was conducted at one volt per inch indicating that although the barriers create risks to people and vessels, those risks could be mitigated by following certain procedures. These mitigation procedures for the barrier operating at one volt per inch were implemented in a temporary interim rule establishing a regulated navigation area and safety zone that was published in the **Federal Register** on February 9, 2009 (74 FR 6352), as well as an NPRM published in the **Federal Register** on May 26, 2009 (74 FR 24722).

However, both of these rulemakings reflected the prior operating parameters of the dispersal barriers and contemplated further testing of the effects of higher voltages on commercial and recreational vessels as well as people. The USACE began safety testing in consultation with the U.S. Coast Guard on August 17, 2009, to test various configurations of commercial tugs and barges as well as recreational vessels with non-conductive hulls passing through the Barriers at increased voltage and operating parameters. Because the USACE decided that the voltage and operating parameters had to be immediately increased prior to the completion of safety testing, the USCG determined that temporary closure of the canal to all vessels through a safety zone was necessary until the risks were better understood. This resulted in successive temporary final rules that suspended the prior temporary interim rule. These temporary final rules enacting safety zones were published in the **Federal Register** on August 26, 2009 (74 FR 43055), September 02, 2009 (74 FR 45318) and September 29, 2009 (74 FR 49815).

Because testing and analysis of the risks to persons and vessels are ongoing and immediate action is needed to prevent injury to people and vessels, it was not possible to provide a full notice and comment period. The Captain of the Port Lake Michigan retains the authority to permit vessels to enter the safety zone. As safety testing results continue to be analyzed and become available, the Captain of the Port Lake Michigan will make every effort to permit vessels to pass when risk mitigation measures can be safely implemented to decrease risk of injury or property damage. If vessels wish to enter the safety zone they must receive permission from the Captain of the Port Lake Michigan to do so and must follow all orders from the Captain of the Port Lake Michigan or her designated on-scene representative while in the zone.

If, for any reasons, the safety zone is at any time suspended, the terms of the regulated navigation area will apply to all vessels. The Captain of the Pork Lake Michigan will cause notice of the enforcement of the regulated navigation area to be made by all appropriate means to effect the widest publicity among the affected segments of the public.

Background and Purpose

The Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990, as amended by the National Invasive Species Act of 1996, authorized the USACE to conduct a demonstration project to identify an environmentally sound method for preventing and reducing the dispersal of non-indigenous aquatic nuisance species through the Chicago Sanitary and Ship Canal. The USACE selected an electric barrier because it is a non-lethal deterrent with a proven history, which does not overtly interfere with navigation in the canal.

A demonstration dispersal barrier (Barrier I) was constructed and has been in operation since April 2002. It is located approximately 30 miles from Lake Michigan and creates an electric field in the water by pulsing low voltage DC current through steel cables secured to the bottom of the canal. A second barrier, Barrier IIA, was constructed 800 to 1300 feet downstream of the Barrier I. The potential field strength for Barrier IIA will be up to four times that of the Barrier I. Barrier IIA was successfully operated for the first time for approximately seven weeks in September and October 2008, while Barrier I was taken down for maintenance. Construction on a third barrier (Barrier IIB) is planned; Barrier IIB would augment the capabilities of Barriers I and IIA.

In the spring of 2004, a commercial towboat operator reported an electrical arc between a wire rope and timberhead while making up a tow in the vicinity of the Barrier I. During subsequent USACE safety testing in January 2005, sparking was observed at points where metal-to-metal contact occurred between two barges in the barrier field.

The electric current in the water also poses a safety risk to commercial and recreational boaters transiting the area. The Navy Experimental Diving Unit (NEDU) was tasked with researching how the electric current from the barriers would affect a human body if immersed in the water. The NEDU final report concluded that the possible effects to a human body if immersed in the water include paralysis of body muscles, inability to breathe, and ventricular fibrillation.

A Safety Work Group facilitated by the Coast Guard and in partnership with the USACE and industry initially met in February 2008 and focused on three goals: (1) Education and public outreach, (2) keeping people out of the water, and (3) egress/rescue efforts. The Safety Work Group has regularly been attended by eleven stakeholders. Key partners include the American Waterways Operators, Illinois River Carriers Association, Army Corps of Engineers Chicago District, Coast Guard Marine Safety Unit Chicago, Coast Guard Sector Lake Michigan/Captain of the Port Lake Michigan, and the Ninth Coast Guard District.

Based on the safety hazards associated with electric current flowing through navigable waterways and the uncertainty of the effects of higher voltage on people and vessels that pass over and adjacent to the barriers, the Coast Guard is closing the waterway until proper testing and analysis of such testing can be completed by the USACE. The Coast Guard appreciates the commercial significance of this waterway and will work closely with the USACE to re-open the waterway as soon as possible; however, it is imperative that this safety zone be immediately enacted to avoid loss of life.

As soon as safety testing and analysis are completed, the Coast Guard plans on publishing a new temporary interim rule (TIR) with requests for comments. Although the Coast Guard anticipates

being able to permit some vessels to transit through the fish barrier after testing is complete, it is currently anticipated any subsequent TIR will continue to place restrictions on vessels including prohibiting some vessels from transiting through the fish barrier entirely. The Coast Guard will then likely follow with a supplemental notice of proposed rulemaking (SNPRM) in order to provide a complete notice and comment period for interested parties. We encourage the public to participate in the rulemaking process by submitting and reviewing comments and related materials at *http://www.regulations.gov* to the dockets associated with the anticipated TIR and any subsequent NPRM/SNPRM.

Affected parties are reminded that the USACE may again raise the operating parameters of the fish barrier in response to ongoing tests regarding the effectiveness of the barrier on the Asian Carp. If this occurs, it is possible that fewer vessels will be given permission to enter the safety zone until further safety testing and analysis can be completed and current timelines for a final rule will be extended.

Discussion of Rule

This rule suspends 33 CFR 165.923 until 5 p.m. on November 20, 2009. This rule places a safety zone on all waters located adjacent to and over the electrical dispersal barriers on the Chicago Sanitary and Ship Canal. The safety zone will be enforced at all times the USACE operates the electrical dispersal barrier higher than one volt per inch until safety testing is conducted that indicates vessels may safely pass. The Coast Guard has deemed this safety zone necessary from October 16, 2009, until November 20, 2009 because safety testing is still being conducted on vessels to determine whether and under what conditions vessels can safely pass adjacent to and over the electrical dispersal barriers. Although every effort will be made to permit vessels to pass as information becomes available; current estimates indicate that testing and analysis will not be completed by the USACE until at least November 20, 2009. Therefore, this safety zone is necessary until that time in order to prevent loss of life and damage to property.

This safety zone, which encompasses all the waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge), will be enforced by the Captain of the Port Lake Michigan, for such times before, during, and after barrier testing as he or she deems necessary to protect mariners and vessels from damage or injury. The Captain of the Port Lake Michigan will cause notice of enforcement or suspension of enforcement of this safety zone to be made by all appropriate means to affect the widest publicity among the affected segments of the public. Such means of notification will include, but is not limited to, Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone is suspended. In addition, Captain of the Port Lake Michigan maintains a telephone line that is manned 24-hours a day, seven days a week. The public can obtain information concerning enforcement of the safety zone by contacting the Captain of the Port Lake Michigan via the Coast Guard Sector Lake Michigan Command Center at 414–747–7182.

In the event that the enforcement of the safety zone is temporarily suspended, this rule implements a regulated navigation area to control the movements of all vessels passing over and adjacent to the barriers. The Captain of the Port Lake Michigan will cause notice of the enforcement of the regulated navigation area to be made by all appropriate means to effect the widest publicity among the affected segments of the public. This regulated navigation area closely mirrors those previously implemented in this area. The regulated navigation area encompasses all waters of the Chicago Sanitary and Ship Canal located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge). The requirements placed on commercial vessels include: (1) Vessels engaged in commercial service, as defined in 46 U.S.C. 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side; (2) commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow; and (3) all up-bound and down-bound barge tows that contain one or more red flag barges must be assisted by a bow boat until the entire tow is clear of the regulated navigation area. Red flag barges are barges certificated to carry, in bulk, any hazardous material as defined in 46 CFR § 150.115. Currently, 46 CFR 150.115 defines hazardous material as:

- A flammable liquid as defined in 46 CFR 30.10–22 or a combustible liquid as defined in 46 CFR 30.10–15;
- A material listed in Table 151.05, Table 1 of part 153, or Table 4 of part 154 of Title 46, CFR; or
- A liquid, liquefied gas, or compressed gas listed in 49 CFR 172.101.

In the past, the USACE contracted for bow boat assistance for barge tows containing one or more red flag barges. Upon exhaustion of USACE funding, bow boats will no longer be available through the USACE. All mariners are reminded that the Coast Guard does not provide bow boat assistance. Mariners should be ready to arrange for their own bow boat assistance. Operators of tows containing one or more red flag barges should notify a bow boat contractor at least two hours prior to the need for assistance. The tow operator should then remain in contact with the contractor after the initial call for bow boat assistance and advise the contractor of any delays.

This temporary final rule places additional restrictions and operating requirements on all vessels within a smaller portion of the regulated navigation area, specifically, the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). Within this smaller area, this temporary final rule prohibits all vessels from loitering, mooring or laying up on the right or left descending banks, or making or breaking tows on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge). In addition, vessels may only enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north

east of Romeo Road Bridge). The temporary final rule also requires all personnel on open decks to wear a Coast Guard approved Type I personal flotation device while on the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

These restrictions are necessary for safe navigation of the regulated navigation area and to ensure the safety of vessels and their personnel as well as the public's safety due to the electrical discharges noted during safety tests conducted by the USACE. Deviation from this temporary final rule is prohibited unless specifically authorized by the Commander, Ninth Coast Guard District or his designated representatives. The Commander, Ninth Coast Guard District designates Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago, as his designated representatives for the purposes of the regulated navigation area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

We expect the economic impact of this rule to be minimal. This determination is based the following: (1) Initial test results at the current operating parameters of two volts per inch indicate that the majority of commercial and recreational vessels that regularly transit the Chicago Sanitary and Ship Canal will be permitted to enter the safety zone under certain conditions; (2) those vessels that will not be permitted to pass through the barrier may be permitted, on a case by case basis, to pass via a dead ship tow by a commercial vessel that is able to transit; and, (3) in exigent circumstances, it may be possible to temporarily drop the voltage of the fish barrier back to one volt per inch.

Because this safety zone must be implemented immediately without a full notice and comment period, the full economic impact of this rule is difficult to determine at this time. The Coast Guard urges interested parties to submit comments that specifically address the economic impacts of permanent or temporary closures of the Chicago Sanitary and Ship Canal. Comments can be made online by going to *http://www.regulations.gov*, inserting USCG–2009–0942 in the ''Keyword'' box, and then clicking ''Search.''

Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) requires agencies to consider whether regulatory actions would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. An RFA analysis is not required when a rule is exempt from notice and comment rulemaking under 5 U.S.C. 553(b). The Coast Guard determined that this rule is exempt from notice and comment rulemaking pursuant to 5 U.S.C. 553(b)(B). Therefore, an RFA analysis is not required for this rule. The Coast Guard, nonetheless, expects that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

The Coast Guard recognizes the treaty rights of Native American Tribes. Moreover, the Coast Guard is committed to working with Tribal Governments to implement local policies and to mitigate tribal concerns. We have determined that these regulations and fishing rights protection need not be incompatible. We have also determined that this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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. Nevertheless, Indian Tribes that have questions concerning the provisions of this rule or options for compliance are encouraged to contact the point of contact listed under **FOR FURTHER INFORMATION CONTACT**.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that this action is one of the category of actions which do not individually or cumulatively have significant effect on the human environment. Therefore, this rule is categorically excluded, under section 2.B.2 Figure 2–1, paragraph (34)(g), of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves the establishing, disestablishing, or changing of regulated navigation areas and security or safety zones. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

§ 165.923 [Suspended]

■ 2. Section 165.923 is suspended until November 20, 2009.

■ 3. Add temporary § 165.T09–0942 as follows:

§ 165.T09–0942 Safety Zone and Regulated Navigation Area, Chicago Sanitary and Ship Canal, Romeoville, IL.

(a) *Safety Zone.* (1) The following area is a temporary safety zone: All waters of the Chicago Sanitary and Ship Canal located between mile marker 296.0 (approximately 958 feet south of the Romeo Road Bridge) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(2) *Enforcement Period.* The safety zone will be enforced from 5 p.m. on October 16, 2009, until 5 p.m. on November 20, 2009. This safety zone is enforceable with actual notice by Coast Guard personnel beginning October 16, 2009.

(3) *Notice of suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the safety zone established by this section at all times. However, the Captain of the Port Lake Michigan may temporarily suspend enforcement of the safety zone. If enforcement of the zone is temporarily suspended, the Captain of the Port Lake Michigan will cause a notice of the suspension of enforcement of this safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will also issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when the temporary suspension of enforcement is over and the zone is once again in operation.

(4) *Regulations.* (i) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan, or her on-scene representative.

(ii) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or her on-scene representative.

(iii) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on her behalf. The on-scene representative of the Captain of the Port Lake Michigan will be aboard a Coast Guard, Coast Guard Auxiliary, or other designated vessel or will be on shore and will communicate with vessels via VHF–FM radio or loudhailer. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via VHF–FM radio Channel 16.

(iv) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or her on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Lake Michigan or her on-scene representative.

(v) If a vessel is permitted by the Captain of the Port Lake Michigan or her on-scene representative to transit the safety zone, all personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the safety zone.

(5) Persons on board any vessel transiting this safety zone in accordance with the rule or otherwise are advised they do so at their own risk.

(b) *Regulated Navigation Area.* The following is a Regulated Navigation Area: All waters of the Chicago Sanitary

and Ship Canal, Romeoville, IL located between mile marker 295.0 (approximately 1.1 miles south of the Romeo Road Bridge) and mile marker 297.5 (approximately 1.3 miles northeast of the Romeo Road Bridge).

(1) *Definitions.* The following definitions apply to this section:

Bow boat means a towing vessel capable of providing positive control of the bow of a tow containing one or more barges, while transiting the regulated navigation area. The bow boat must be capable of preventing a tow containing one or more barges from coming into contact with the shore and other moored vessels.

Designated representatives means the Captain of the Port Lake Michigan and Commanding Officer, Marine Safety Unit Chicago.

Hazardous material means any material as defined in 46 CFR 150.115.

Red flag barge means any barge certificated to carry any hazardous material in bulk.

(2) *Notice of enforcement or suspension of enforcement.* The Captain of the Port Lake Michigan will enforce the regulated navigation area established by this section only upon notice. Captain of the Port Lake Michigan will cause notice of the enforcement of this regulated navigation area to be made by all appropriate means to effect the widest publicity among the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include but are not limited to, Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan will issue a Broadcast Notice to Mariners and Local Notice to Mariners notifying the public when enforcement of this regulated navigation area is suspended.

(3) *Regulations.* (i) The general regulations contained in 33 CFR 165.13 apply.

(ii) All up-bound and down-bound barge tows that contain one or more red flag barges transiting through the regulated navigation area must be assisted by a bow boat until the entire tow is clear of the regulated navigation area.

(iii) Vessels engaged in commercial service, as defined in 46 U.S.C 2101(5), may not pass (meet or overtake) in the regulated navigation area and must make a SECURITE call when approaching the regulated navigation area to announce intentions and work out passing arrangements on either side.

(iv) Commercial tows transiting the regulated navigation area must be made up with wire rope to ensure electrical connectivity between all segments of the tow.

(v) All vessels are prohibited from loitering between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vi) Vessels may enter the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge) for the sole purpose of transiting to the other side and must maintain headway throughout the transit. All vessels and persons are prohibited from dredging, laying cable, dragging, fishing, conducting salvage operations, or any other activity, which could disturb the bottom of the canal in the area located between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(vii) All personnel on open decks must wear a Coast Guard approved Type I personal flotation device while in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(viii) Vessels may not moor or lay up on the right or left descending banks of the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(ix) Towboats may not make or break tows if any portion of the towboat or tow is located in the waters between the Romeo Road Bridge (approximate mile marker 296.18) and mile marker 296.7 (aerial pipeline located approximately 0.51 miles north east of Romeo Road Bridge).

(4) *Compliance.* All persons and vessels must comply with this section and any additional instructions or orders of the Ninth Coast Guard District Commander, or his designated representatives. Any person on board any vessel transiting this regulated navigation area in accordance with this rule or otherwise does so at their own risk.

(5) *Waiver.* For any vessel, the Ninth Coast Guard District Commander, or his designated representatives, may waive any of the requirements of this section, upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purposes of vessel and mariner safety.

Dated: October 16, 2009.

D.R. Callahan,

Captain, U.S. Coast Guard, Commander, Ninth Coast Guard District, Acting.

[FR Doc. E9–27219 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0949]

RIN 1625–AA00

Safety Zone; Fireworks Displays, Potomac River, National Harbor, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon specified waters of the Potomac River. This action is necessary to provide for the safety of life on navigable waters during fireworks displays launched from discharge sites located at National Harbor, in Prince Georges County, Maryland. This safety zone is intended to protect the maritime public in a portion of the Potomac River.

DATES: This rule is effective from 6 p.m. November 19, 2009 through 8 p.m. November 28, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0949 and are available online by going to *http://www.regulations.gov*, inserting USCG–2009–0949 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Ronald L. Houck, Sector Baltimore Waterways Management Division, Coast Guard; telephone 410–576–2674, e-mail *Ronald.L.Houck@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is contrary to public interest to delay the effective date of this rule. Delaying the effective date by first publishing an NPRM would be contrary to the safety zone's intended objectives since immediate action is needed to protect persons and vessels against the hazards associated with fireworks displays on navigable waters. Such hazards include premature detonations, dangerous projectiles and falling or burning debris.

For the same reasons as above, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Due to the need for immediate action, the restriction of vessel traffic is necessary to protect life, property and the environment; therefore, a 30-day notice is impracticable. Delaying the effective date would be contrary to the safety zone's intended objectives of protecting persons and vessels involved in the event, and enhancing public and maritime safety.

Background and Purpose

Fireworks displays are frequently held from locations on or near the navigable waters of the United States. The potential hazards associated with fireworks displays are a safety concern during such events. The purpose of this rule is to promote public and maritime safety during fireworks displays, and to protect mariners transiting the area from the potential hazards associated with the fireworks displays, such as the accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the scheduled events.

Discussion of Rule

The Gaylord Hotel at National Harbor will sponsor a fireworks display from a barge located in the Potomac River scheduled on Thursday, November 19, 2009 at 7 p.m. and a fireworks display from the end of a pier located in the Potomac River scheduled on Friday, November 27, 2009 at 6:45 p.m.

The Coast Guard is establishing a temporary safety zone on certain waters of the Potomac River, within an area bounded by a line drawn from the following points: latitude 38°46′51″ N, longitude 077°01′15″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to latitude 38°47′13″ N, longitude 077°00′58″ W; thence along the shoreline to the point of origin, located at National Harbor, Maryland (NAD 1983). The temporary safety zone will be enforced from 6 p.m. through 8:30 p.m. on November 19, 2009, and if necessary due to inclement weather, from 6 p.m. through 8:30 p.m. on November 20, 2009; and from 5:30 p.m. through 8 p.m. on November 27, 2009, and if necessary due to inclement weather, from 5:30 p.m. through 8 p.m. on November 28, 2009. The effect of this temporary safety zone will be to restrict navigation in the regulated area during the fireworks displays. No person or vessel may enter or remain in the safety zone. Vessels will be allowed to transit the waters of the Potomac River outside the safety zone. Notification of the temporary safety zone will be provided to the public via marine information broadcasts.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this safety zone will restrict some vessel traffic, there is little vessel traffic associated with commercial fishing, and recreational boating in the area can transit waters outside the safety zone. In addition, the effect of this rule will not be significant because the safety zone is of limited duration and limited size. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate, transit, or anchor in a portion of the Potomac River, located at National Harbor, MD, from 6 p.m. through 8:30 p.m. on November 19, 2009, and if necessary due to inclement weather, from 6 p.m. through 8:30 p.m. on November 20, 2009 and from 5:30 p.m. through 8 p.m. on November 27, 2009, and if necessary due to inclement weather, from 5:30 p.m. through 8 p.m. on November 28, 2009. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone is of limited size and duration. In addition, before the effective period, the Coast Guard will issue maritime advisories widely available to users of the waterway to allow mariners to make alternative plans for transiting the affected area.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain

about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves establishing a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T05–0949 to read as follows:

§ 165.T05–0949 Safety Zone; Fireworks Displays, Potomac River, National Harbor, MD.

(a) *Regulated Area.* The following area is a safety zone: All waters in the Potomac River, within an area bounded by a line drawn from the following points: latitude 38°46′51″ N, longitude 077°01′15″ W; thence to latitude 38°47′25″ N, longitude 077°01′33″ W; thence to latitude 38°47′32″ N, longitude 077°01′08″ W; thence to latitude 38°47′13″ N, longitude 077°00′58″ W; thence along the shoreline to the point of origin, located at National Harbor, Maryland (NAD 1983).

(b) *Regulations.* All persons are required to comply with the general regulations governing safety zones in 33 CFR 165.23 of this part.

(1) All vessels and persons are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port Baltimore.

(2) Persons or vessels requiring entry into or passage within the zone must request authorization from the Captain of the Port or his designated representative by telephone at 410–576–2693 or on VHF–FM marine band radio channel 16.

(3) All Coast Guard assets enforcing this safety zone can be contacted on VHF–FM marine band radio channels 13 and 16.

(4) The operator of any vessel within or in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign, and

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(c) *Definitions. Captain of the Port Baltimore* means the Commander, Coast Guard Sector Baltimore or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on his behalf.

Designated representative means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Baltimore to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement*. The U.S. Coast Guard may be assisted by Federal, State and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement periods*. This section will be enforced:

(1) From 6 p.m. through 8:30 p.m. on November 19, 2009, and if necessary due to inclement weather, from 6 p.m. through 8:30 p.m. on November 20, 2009; and

(2) From 5:30 p.m. through 8 p.m. on November 27, 2009, and if necessary due to inclement weather, from 5:30 p.m. through 8 p.m. on November 28, 2009.

Dated: October 23, 2009.

Mark P. O'Malley,

Captain, U.S. Coast Guard, Captain of the Port Baltimore, Maryland.

[FR Doc. E9–27220 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0558; FRL–8975–6]

Revisions to the Arizona State PM–10 Implementation Plan; Maricopa County Air Quality Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Maricopa Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on August 26, 2009 and concern particulate matter (PM) emissions from non-metallic mineral mining and processing in the Maricopa County (Phoenix) serious PM–10 nonattainment area. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on January 8, 2010.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2009–0558 for this action. The index to the docket is available electronically at *http://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: Sona Chilingaryan, EPA Region IX, (415) 972–3368, *chilingaryan.sona@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Proposed Action

On August 26, 2009 (74 FR 43085), EPA proposed to approve the following rule into the Arizona SIP.

Local agency	Rule #	Rule title	Adopted	Submitted
MCAQD	316	Nonmetallic Mineral Processing	3/12/08	7/10/08

We proposed to approve this rule because we determined that it complied with the CAA requirements for Best Available Control Measures (Section 189(b)(1)(B)) and Most Stringent Measures (Section 188(e)). Our proposed action contains more information on the rule and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Lawrence Odle, Director, MCAQD; letter dated September 23, 2009 and received September 25, 2009.

2. Joy E. Herr-Cardillo, Staff Attorney, Arizona Center for Law in the Public Interest (ACLPI); letter dated and received on September 25, 2009.

The comments and our responses are summarized below.

Comment #1: MCAQD supports our proposed approval of 316.

Response #1: No response necessary.

Comment #2: MCAQD provides information related to MCAQD's current efforts and future plans to improve and clarify Rule 316. MCAQD has initiated a rulemaking process to revise the rule to include alternative control measures approved by MCAQD and EPA, has formed a working group to evaluate the Department's experience with the moisture testing and sampling protocols related to the rule, and plans to separate the requirements in Rule 316 for different kinds of facilities into five separate rules. In the current rulemaking, the Department intends to separate product transfer and distribution facilities out of Rule 316, and in the future also plans to separate asphaltic concrete batch plants, concrete batch plants, inert landfills, and gypsum and all types of mulch.

Response #2: This comment addresses MCAQD's future plans and was provided for information purposes only. It does not affect EPA's proposed action on the March 12, 2008 version of Rule 316, and no further response is necessary.

Comment #3: MCAQD comments that Table 1 in 74 FR 43085 incorrectly refers to 3/10/08 as the adoption date for the rule, and notes that the correct date is 3/12/08.

Response #3: We agree. There was a typographical error in the adoption date. We do not believe this error is likely to result in significant confusion since only one version of the rule was adopted in 2008, and the previous version was adopted in 2005.

Comment #4: ACLPI comments that in August 2009 it notified us of its intent to take legal action against EPA for failure to act on Rule 316. ACLPI supports the proposed approval and the increased stringency of Rule 316.

Comment #4: No response necessary.

III. EPA Action

No comments were submitted that change our assessment that the submitted rule complies with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving this rule into the Arizona SIP as meeting the requirements of sections 189(b)(1)(B) and 188(e).

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves State law as meeting Federal requirements and does not impose additional requirements beyond those imposed by State law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- 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);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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 January 12, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action 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 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 5, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart D—Arizona

■ 2. Section 52.120 is amended by adding paragraph (c)(141)(i)(B)(*2*) to read as follows:

§ 52.120 Identification of plan.

* * * * *

(c) * * *

(141) * * *

(i) * * *

(B) * * *

(*2*) Rule 316, ''Nonmetallic Mineral Processing,'' adopted on March 12, 2008.

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[FR Doc. E9–27046 Filed 11–12–09; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–8979–2]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is publishing a direct final rule, a Notice of Partial Deletion of the California Gulch Superfund Site (Site), located in Lake County, Colorado, including all of Operable Unit 8 (OU8), from the National Priorities List (NPL). The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final partial deletion is being published by EPA with the concurrence of the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE) because EPA has determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this partial deletion does not preclude future actions under Superfund.

This partial deletion pertains to all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment. The

Yak Tunnel (OU1), D&RGW Slag Piles and Easement (OU3), Upper California Gulch (OU4), Asarco Smelter/Colorado Zinc-Lead Mill site (OU5), Stray Horse Gulch (OU6), Apache Tailing (OU7), Residential Soils (OU9), Arkansas River Floodplain (OU11), and Site-wide Surface and Groundwater Quality (OU12) will remain on the NPL and are not being considered for deletion as part of this action.

DATES: This direct final partial deletion is effective January 12, 2010 unless EPA receives adverse comments by December 14, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final partial deletion in the **Federal Register** informing the public that the partial deletion will not take effect.

ADDRESSES:

Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow online instructions for submitting comments.
- *E-mail:* Linda Kiefer, *kiefer.linda@epa.gov.*
- *Fax:* (303) 312–7151.
- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://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.

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

U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312–6473 or toll free (800) 227–8917; Viewing hours: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays;

and

Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486–0569.

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689 *e-mail: kiefer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

I. Introduction

EPA Region 8 is publishing this direct final Notice of Partial Deletion for Operable Unit 8 (OU8) of the California Gulch Superfund Site (Site), from the National Priorities List (NPL). This partial deletion pertains to all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment. The NPL constitutes Appendix B of 40 CFR part 300, the Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA maintains the NPL as the list of sites that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). This partial deletion of the Site is proposed in accordance with 40 CFR 300.425(e) and is consistent with the Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List. 60 FR 55466 (Nov. 1, 1995). As described in § 300.425(e)(3) of the NCP, a portion of a site deleted from the NPL remains eligible for Fund-financed remedial action if future conditions warrant such actions.

Because EPA considers this action to be noncontroversial and routine, this action will be effective *January 12, 2010* unless EPA receives adverse comments by *December 14, 2009.* Along with this direct final Notice of Partial Deletion, EPA is co-publishing a Notice of Intent for Partial Deletion in the ''Proposed Rules'' section of the **Federal Register**. If adverse comments are received within the 30-day public comment period on this partial deletion action, EPA will publish a timely withdrawal of this direct final Notice of Partial Deletion before the effective date of the partial deletion and the partial deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the Notice of Intent for Partial Deletion and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses OU8 of the California Gulch Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to partially delete the Site parcels from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

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

consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. all appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. the remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, the taking of remedial measures is not appropriate.

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

III. Partial Deletion Procedures

The following procedures apply to the deletion of OU8 of the Site:

(1) EPA has consulted with the State of Colorado prior to developing this direct final Notice of Partial Deletion and the Notice of Intent for Partial Deletion co-published in the ''Proposed Rules'' section of the **Federal Register**.

(2) EPA has provided the State 30 working days for review of this notice and the parallel Notice of Intent for Partial Deletion prior to their publication today, and the State, through the Colorado Department of Public Health and Environment, has concurred on the partial deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final Notice of Partial Deletion, a notice of the availability of the parallel Notice of Intent for Partial Deletion is being published in a major local newspaper, the Leadville Herald Democrat. The newspaper notice announces the 30-day public comment period concerning the Notice of Intent for Partial Deletion of the Site from the NPL.

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

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

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

IV. Basis for Partial Site Deletion

The following information provides EPA's rationale for deleting OU8.

Site Background and History

The California Gulch Superfund Site (Site), EPA ID No. COD980717938, is located in Lake County, Colorado approximately 100 miles southwest of Denver. The Site was listed on the National Priorities List on September 8, 1983, 48 FR 40658. The Site is in a highly mineralized area of the Colorado Rocky Mountains covering approximately 18 square miles of a watershed that drains along California Gulch to the Arkansas River.

Mining, mineral processing, and smelting activities have occurred at the Site for more than 130 years. Mining in the District began in 1860, when placer gold was discovered in California Gulch. As the placer deposits were exhausted, underground workings became the principle method for removing gold, silver, lead, and zinc ore. As these mines were developed, waste rock was excavated along with the ore and placed near the mine entrances. Ore was crushed and separated into metallic concentrates at mills, with mill tailing generally slurried into tailing impoundments. As a result of these operations, the Site contains many tailing impoundments, fluvial deposits, slag piles, waste rock piles, and mine water drainage tunnels. The Site was placed on the NPL due to concerns regarding the impact of mine drainage on surface waters leading to California Gulch and the impact of heavy metals loading into the Arkansas River.

The Site includes the City of Leadville, various parts of the Leadville Historic Mining District, Stringtown, and a section of the Arkansas River from the confluence of California Gulch to the confluence of Two-Bit Gulch.

A Site-wide Phase I Remedial Investigation (Phase I RI), which primarily addressed surface and groundwater contamination, was issued in January 1987. As a result of the Phase I RI, EPA developed the first operable unit at the Site, the Yak Tunnel. This first operable unit was designed to address the largest single source of metallic loading. A number of additional Site-wide studies followed the Phase I RI. These include the Tailing Disposal Area Remedial Investigation Report (Tailing RI), Baseline Human Health Risk Assessment Part A, Part B, and Part C, Ecological Risk Assessment for Terrestrial Ecosystems, Baseline Aquatic Ecological Risk Assessment, Groundwater RI, Surface Water RI, Waste Rock RI, and Site-wide Screening Feasibility Study (SFS).

In order to expedite the clean-up of the Site, EPA agreed, pursuant to a May 2, 1994 Consent Decree (1994 CD), to divide the Site into twelve Operable Units (OUs). With the exception of OU12, the operable units pertain to distinct geographical areas corresponding to areas of responsibility for the identified responsible parties and/or to distinct sources of contamination. The OUs are as follows:

1. Yak Tunnel/Water Treatment Plant
2. Malta Gulch Tailing Impoundments and Lower Malta Gulch Fluvial Tailing
3. D&RGW Slag Piles and Easement
4. Upper California Gulch
5. Asarco Smelter Sites/Slag/Mill Sites
6. Starr Ditch/Stray Horse Gulch/Lower Evans Gulch/Penrose Mine Waste Pile
7. Apache Tailing Impoundments
8. Lower California Gulch
9. Residential Populated Areas
10. Oregon Gulch
11. Arkansas River Valley Floodplain
12. Site-wide Surface and Ground Water

To date, OU2, OU10 and portions of OU9 have been deleted from the Site. The remaining OUs are still on the NPL.

Background and History

Operable Unit 8 (OU8) also known as Lower California Gulch is defined by the 500-year floodplain of the California Gulch from immediately below the boundary of the Yak Tunnel Water Treatment Plant (OU1) to the point of confluence of California Gulch with the Arkansas River, and includes the

Colorado Zinc-Lead (CZL) Tailing Impoundment outside the 500-year floodplain. OU8 is approximately 97 acres in size and 4.3 miles long. OU8 borders portions of several other operable units including OU1 (Yak Tunnel Treatment Plant), OU2 (Malta Gulch), OU3 (D&RGW slag piles), OU5 (Asarco smelters/slag/mill sites), OU7 (Apache Tailing Impoundments), OU9 (Residential Populated areas), and OU10 (Oregon Gulch). Lower California Gulch receives runoff and water from tributaries that drain all or portions of these other operable units. Lower California Gulch also receives tributary water from upper California Gulch and Stray Horse Gulch via Starr Ditch, which drain areas of OU4 (Upper California Gulch) and OU6 (Starr Ditch/Penrose Dump/Stray Horse Gulch). The land area within OU8 consists predominantly of private property. While no residences are located in OU8, several anthropogenic features, primarily consisting of highway bridges, road crossings, and culverts, currently exist within the 500-year floodplain of Lower California Gulch. Lower California Gulch roughly parallels U.S. Highway 24.

Historically, tailing impoundments within the Site have resulted in fluvial deposits of tailing being transported by surface flows and deposited at specific locations in OU8. Since that time, remediation activities have occurred upstream in OUs 1, 4 and 6. Previously, during high flow events, stream sediments originating from source areas primarily upstream of OU8 were transported by California Gulch and associated tributaries into and within OU8. The stream sediment in Lower California Gulch was contaminated with mine wastes and associated metals transported from upstream sources. The soluble metals contained in runoff have contributed to the contamination of surface water and sediments. Additionally, waste rock from underground mining was frequently dumped near mineshafts within the Site and has added to the contamination.

The CZL tailing impoundment is the only tailing impoundment identified in OU8. The CZL site was an operating flotation mill that processed zinc-lead ores sporadically between 1925 and 1940. The CZL tailing impoundment is located approximately one mile west of Leadville and immediately north of Stringtown. The CZL tailing impoundment at the site of the flotation mill operation covered approximately 1.6 acres at an average depth of 7 feet. The CZL tailing impoundment contained an estimated 17,000 cubic yards of tailing.

The Gaw waste rock pile is located upstream of the Apache Tailing Impoundment (OU7) within OU8. The Gaw waste rock pile represents the only deposit of waste rock identified within OU8.

Five fluvial tailing sites within OU8 were found to have elevated levels of contamination. Fluvial Tailing Site 1 (FTS1), comprising approximately 3.4 acres, is adjacent to the La Plata Slag Pile (part of OU3) and extends downstream in a westerly direction to a point approximately 1,000 feet up gradient of the CZL Tailing Impoundment. California Gulch flows through the tailing and the gulch has cut a channel through the fluvial deposits. The fine to coarse grained tailing and alluvial/tailing materials ranged from 1–6 feet in depth.

Fluvial Tailing Site 2 (FTS2) lies 200 feet downstream of FTS1 and is estimated to be 3.2 acres. The fluvial tailing material in FTS2 is generally light brown to brown clay silts and sands overlying light brown silt that contains cobbles and sand.

Fluvial Tailing Site 3 (FTS3) is located immediately downstream of Lake County Road 6 on California Gulch and covers approximately 4.8 acres. The flow of California Gulch through FTS3 is split into a north and south channel, with most of the flow occurring in the North Channel.

Fluvial Tailing Site 6 (FTS6) is located on California Gulch between the Yak Tunnel Treatment Plant Surge Pond embankment and the Apache Tailing Impoundments comprising approximately 4.2 acres. A portion of the Gaw waste rock pile also lies within FTS6. The pile covers approximately one half acre and is estimated to have a volume of 7,500 cubic yards.

Fluvial Tailing Site 8 (FTS8) extends from the Arkansas Valley Slag Pile (part of OU3) to a point approximately 6,500 feet downstream to the confluence of California Gulch with the Arkansas River. FTS8 is a series of small discontinuous tailing deposits with a total estimated area of 115 acres. Approximately 45 acres of fluvial tailing that lie within the floodplain boundaries of the portion of FTS8 are addressed in the OU8 Record of Decision.

Non-residential area soils are defined as poorly vegetated areas outside of the fluvial tailing sites and within the OU8 boundary. The studies identified about 6.3 acres of non-residential area soils with elevated levels of contaminants.

Stream sediments were identified as a potential contaminant source in the SFS. The primary concerns were loose and erodible sediments that could be resuspended and carried downstream. The studies estimated that there were about 4,500 cubic yards of stream sediments of potential concern.

EPA is the lead agency for OU8, and the Colorado Department of Public Health and Environment (CDPHE) is the support agency. Pursuant to the 1994 CD, Resurrection Mining Company (Resurrection) conducted and financed remediation work in OU8.

Remedial Investigations and Feasibility Study (RI/FS)

A number of studies and remedial investigations have been conducted within the California Gulch Superfund Site that have addressed Lower California Gulch (OU8). The following areas were identified as potential contaminant sources in OU8: Areas of impounded tailing in the Colorado Zinc-Lead (CZL) Tailing Impoundment located in the California Gulch 500-year flood plain, non-residential area soils, waste rock in the Gaw Waste Rock Pile, fluvial tailing in five fluvial tailing sites, and stream sediments. Potential contaminant sources identified in OU8 by the numerous investigations are described below.

CZL Fluvial Tailing Impoundment: Contained elevated concentrations of lead, cadmium, arsenic, and zinc with the potential to generate Acid Rock Drainage (ARD).

Non-Residential Soils: Metals concentrations are generally low and decrease with depth to the native undisturbed soils.

Gaw Waste Rock Pile: Surface soil contained lead at slightly elevated concentrations, outflow from the Gaw shaft demonstrated neutral pH values, with minimally elevated sulfate concentrations, and metals typically were below limits of detection.

FTS 1,2, and 3: Surface tailings had elevated levels of arsenic, cadmium, lead, and zinc; subsurface tailing had elevated levels of arsenic, cadmium, and lead; foundation soils had elevated levels of silver, cadmium, arsenic, lead, and zinc.

FTS 6: Surface tailing had elevated levels of arsenic, cadmium, copper, lead, mercury, silver, and zinc; subsurface tailing had elevated levels of arsenic, cadmium, copper, lead, manganese, mercury, and zinc; foundation soils had elevated levels of silver, cadmium, copper, arsenic, lead, and zinc; the waste pile has potential for generating ARD.

FTS 8: Surface tailing had elevated levels of arsenic, cadmium, copper, lead, and zinc; subsurface tailing had elevated levels of arsenic, cadmium,

lead, and zinc; foundation soils had elevated levels of cadmium.

Stream sediments: Had elevated levels of arsenic, cadmium, lead, copper, and zinc.

A Focused Feasibility Study (FFS) for OU8 was prepared by Resurrection in 2000. The FFS evaluated and screened remedial alternatives retained in the site-wide SFS for impounded tailing, non-residential area soils, waste rock, fluvial tailing, and stream sediment within OU8. The FFS presented a comparative analysis of the potential remedial alternatives based on the nine NCP evaluation criteria. A proposed plan for OU8 was published on July 27, 2000.

Selected Remedy

In order to take advantage of the availability of the Oregon Gulch Tailing Impoundment in OU10 as a repository for contaminated materials from OU8, two interim removal actions were approved for OU8 in 1995 and 1998. In the first interim removal action, approximately 28,000 cubic yards of material were excavated from the CZL Tailing Impoundment, the western portion of FTS2, and the underlying foundation soils and placed in the Oregon Gulch Tailing Impoundment (OU10). The excavated area was backfilled with clean borrow soil, graded, and vegetated. Wetlands adjacent to the CZL Tailing Impoundment site were revegetated in the summer of 1996. The activities were documented in the 1995 Action Memorandum for OU8. In the second interim removal action, approximately 5,794 cubic yards of fluvial tailing were excavated from poorly vegetated, erosion-prone areas within OU8 (specifically, FTS2, FTS3, FTS6, and FTS8). The excavated tailing was transported and placed in the Oregon Gulch Tailing Impoundment (OU10). In conjunction with channel excavation under the second interim removal action, approximately 1,339 cubic yards of sediment were removed from accumulated sediment in FTS2 and FTS3. The excavated stream sediment was transported and placed in the Oregon Gulch Tailing Impoundment (OU10). These activities were documented in the 1998 Action Memorandum for OU8. Resurrection conducted both removal actions.

A Record of Decision for OU8 (OU8 ROD) was signed on September 29, 2000.

The remedial action objectives (RAOs) for the remedies presented in the OU8 ROD are summarized below.

- Control airborne transport of tailing particles and contaminated non-residential soils.
- Control leaching and migration of metals from tailing, soil, waste rock, and contaminated fluvial and stream sediments into surface water.
- Control leaching and migration of metals from tailing, soil, waste rock, and contaminated fluvial and stream sediments into groundwater.
- Control erosion of tailing material and soil materials into local water courses.
- Control contaminant exposure to terrestrial and aquatic life.

The selected remedies for addressing the contaminated media within OU8 are described below.

CZL Impounded Tailing: No Further Action was the selected alternative for impounded tailing within OU8. All tailing were removed from the CZL Tailing Impoundment site in the 1995 Removal Action and no other impounded tailing exist within OU8.

Non-Residential Area Soils: Containment was the selected alternative for non-residential area soils within OU8. The Non-Residential Area Soils were to be regraded to promote positive drainage, soil amendment added, and re-vegetated. Institutional controls are required.

Gaw Waste Rock: No Action was the selected alternative for waste rock within OU8. No Action was selected since the Site-wide studies and remedial investigations showed that the Gaw waste rock pile was not a source of contamination to surface water or groundwater.

Fluvial Tailing: Containment was the selected alternative for fluvial tailing within OU8. This alternative consisted of (1) regrading, (2) revegetation, (3) riprap or erosion-control matting in erosion-prone areas of fluvial tailing, and (4) institutional controls.

Stream Sediment: Sediment Removal and Channel Reconstruction was the selected alternative for stream sediment within OU8. This alternative consists of (1) reconstruction of unstable braided channel areas of FTS3, (2) construction of a channel through FTS6, (3) removal of sediment and channel improvements in currently erosionally unstable areas, and (4) institutional controls.

Response Actions

Remedial action activities for OU8 began in August 2001 by the responsible party, Resurrection Mining Company. For the non-residential area soils remedy, approximately 4.5 acres of poorly-vegetated upland soils were regraded and revegetated. Revegetation of non-residential soils was approached on a site-specific basis utilizing amendments as necessary based on the results of agronomic soil tests.

For Fluvial Tailings pile FTS1, remedial construction included regrading of the tailings in place and placing riprap on the embankment adjacent to the California Gulch stream channel. The tailing surface was covered with approximately one foot of growth material and was regraded to provide positive, non-erosive drainage into California Gulch. The surface was revegetated. For Fluvial Tailings pile FTS2, construction involved regrading existing berms and constructing new berms in erosion-prone areas of the north stream bank. Berms were reinforced with riprap, and disturbed areas were revegetated. For Fluvial Tailings pile FTS3, construction involved reconstruction of the stream channel, reinforcement of stream bank areas prone to erosion, and revegetation of disturbed areas. For Fluvial Tailings pile FTS6, remediation included reconstruction of the stream channel and revegetation of disturbed areas. Stream channel restoration involved abandonment of the elevated channel where California Gulch historically bypassed the Apache tailing impoundment to the valley floor. For Fluvial Tailings pile FTS8, construction involved placement of borrow soil in fluvial tailing removal areas, removal of sediments from the California Gulch stream channel, stabilization of existing berms, and construction and reinforcement of new berms in areas prone to erosion.

Remediation activities of the California Gulch included widening the existing stream channel and regrading riprap on existing berms. Areas disturbed during construction were revegetated.

Construction was completed in September of 2002.

Cleanup Goals

OU8 was established pursuant to the 1994 CD. The intent of the parties under the 1994 CD was that source remediation would occur in each of the designated operable units and once source remediation was completed in those OUs, site-wide surface water and groundwater would then be examined and addressed as needed. Thus, specific numerical cleanup standards for surface water or groundwater were not established for OU8. Instead, the RAOs considered actions designed to prevent or control the release or threatened release of waste material or contaminants of concern from sources of contamination within OU8.

The Selected Remedies met the RAOs by either excavating and removing materials from OU8, therefore preventing the release of waste material, or containing the contaminated materials and controlling the release of waste material to air and water.

Operation and Maintenance

Resurrection performs operation and maintenance pursuant to the May 2008 OU4, OU8, and OU10 Operation and Maintenance Plan. This plan requires biannual inspection/maintenance of the constructed components of the remedies in OU8 and annual reporting to EPA and CDPHE. The constructed components are to be inspected and maintained as follows:

Revegetated Channels and Ditches: Revegetated channels will be inspected for erosion/scour, sediment collection, and vegetative cover. Sediment and material in excess of two inches in depth will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Scouring deeper than two inches below the base of the channel or rills and/or gullies on the channel sideslopes deeper than two inches in depth will be repaired.

Riprap-Lined Channels, Banks, and Berms: Riprap-lined channels, banks, and berms will be inspected for erosion and uniformity of rock placement and in the case of channels, capacity restriction. For channels, sediment and material in excess of two inches in depth above the top of the riprap will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Larger quantities of sediment that can not be placed adjacent to a channel will be placed at locations within the Site as approved by the EPA and the State. Areas in which riprap has been displaced to expose the channel, bank, or berm subgrade will be repaired with rock meeting the as-built specifications in the completion report and material restricting the channel capacity will be removed.

Reno Mattress-Lined Channels and Gabion Structure: Reno mattresses and gabions will be inspected for structural integrity. Damaged mattresses and baskets will be repaired. Erosion under or around the mattresses or gabions will be repaired.

Erosion Control Block-lined Channels: Channels constructed using erosion control blocks will be inspected for eroded or broken blocks and erosion of the channel banks. Sediment and material in excess of one inch in depth above the top of the blocks will be removed. Quantities of sediment less than 10 cubic yards may be placed next to the channel, in areas that will minimize remobilization. Damaged or eroded blocks which cause the channel subgrade to be exposed will be repaired or replaced with blocks meeting the as-built specifications in the completion report to maintain channel integrity.

Revegetated Areas: Areas revegetated during remedial construction will be inspected for erosional stability and vegetative cover. Inspected areas will include channel banks, floodplains, non-residential soils, embankment toes, tailing and waste rock areas. Erosion rills or gullies in excess of two inches deep in revegetated areas will be repaired. In addition, vegetative areas will be inspected for the presence of bareground areas. Areas void of or containing little vegetation which are larger in area than 100 square feet will be considered bareground areas. Identified bareground areas will be assessed for agronomic conditions, and any necessary soil amendments identified by the agronomic assessment will be completed and the area will be reseeded during next spring or fall planting season.

Bi-annual (twice per year) inspections will be performed in late spring or early summer after snowmelt has occurred and in mid- to late fall.

A report will be prepared and submitted to Region 8 of the U.S. Environmental Protection Agency (EPA) and the Colorado Department of Public Health and Environment (CDPHE) prior to the end of each year (December 31) documenting the inspection and maintenance activities. The report will discuss the inspection and include: (1) Completed copies of the inspection forms contained in Appendix B, (2) photographs of areas where inspections and maintenance were performed, and (3) maintenance activities performed.

In addition, Lake County passed an ordinance on March 2, 2009 that established institutional controls for OU8. Under this ordinance, the fluvial tailing sites, non-residential soils, and constructed elements of the remedies as depicted on the corresponding map available at the Lake County Building and Land Use Department within OU8, are designated as engineered remedies. The County will not issue a permit for any activity on property that contains a designated engineered remedy unless the permit applicant has secured approval for those activities from the CDPHE. For all other portions of OU8 not designated as part of an engineered remedy, the ordinance provides that any excavation or other earth removal activity that exceeds 10 cubic yards requires CDPHE approval for such activity as a condition precedent to the County granting a permit. Finally, the ordinance provides that all permit applicants shall be provided with information regarding best management practices regarding potentially contaminated soils and the applicant must certify they have received and reviewed this information before a permit will be issued.

Five-Year Review

The remedies at the Site require ongoing five-year reviews in accordance with CERCLA Section 121(c) and § 300.430(f)(4)(ii) of the NCP. The next five-year review for the California Gulch Site is scheduled for 2012.

The five-year review in 2007 noted that all remedial actions in OU8 have been completed. Biannual inspections were performed in accordance with the Final California Gulch Superfund Site Operation and Maintenance Plan, Operable Units 4, 8 and 10 as revised in January 2005. Two action items for OU8 were recommended in the 2007 five-year review. First, a portion of Non-Residential Soils Areas, FTS1 and FTS2 remedies were in need of repair or replacement to extend the life of the cap. The existing remedy was repaired so that mine waste does not come into contact with California Gulch flows or allow precipitation to accumulate on the tailing surface. Second, institutional controls were needed to ensure protection of human health in the event of changes in zoning or to preclude disturbance of engineered remedies as a result of development consistent with current zoning. These institutional controls are now in place as discussed above.

Community Involvement

Public participation activities have been satisfied as required in CERCLA Section 113(k), 42 U.S.C. 9613(k) and CERCLA Section 117, 42 U.S.C. 9617. Documents in the partial deletion docket which the EPA relied on for recommendation for the partial deletion from the NPL are available to the public in the information repositories and a notice of availability of the Notice of Intent for Partial Deletion has been published in the Leadville Herald Democrat to satisfy public participation procedures required by 40 CFR 300.425(e)(4).

The Lake County Commissioners and the Mayor of Leadville are supportive of the deletion of OU8.

Determination That the Criteria for Deletion Have Been Met

More specifically for OU8, EPA and the State have determined that the responsible parties completed all appropriate response actions required by the OU8 Record of Decision, the 1995 Action Memorandum, 1998 Action Memorandum and the 1994 Consent Decree. Additionally Resurrection has continuing obligations to perform operation and maintenance of the remedies under the OU4, OU8, and OU10 Operation and Maintenance Plan. Furthermore, institutional controls are in place. EPA has consulted with the State, Lake County Commissioners, and the City of Leadville, Colorado on the proposed partial deletion of OU8 from the NPL prior to developing this Notice of Partial Deletion. Through the five-year reviews, EPA has also determined that all response actions have been completed such that any release from the contaminated media contained in place poses no significant threat to public health or the environment and, therefore, taking of additional remedial measures is not appropriate.

Pursuant to CERCLA section 121(c) and the NCP, EPA will conduct the next five-year review in 2012 to ensure the continued protectiveness of remedial actions where hazardous substances, pollutants, or contaminants remain at a site above levels that allow for unlimited use and unrestricted exposure.

V. Deletion Action

The EPA, with concurrence of the State of Colorado through the Colorado Department of Public Health and Environment has determined that all appropriate response actions under CERCLA, other than operation, maintenance, monitoring and five-year reviews, have been completed. Therefore, EPA is deleting all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication. This action will be effective *January 12, 2010* unless EPA receives adverse comments by *December 14, 2009.* If adverse comments are received within the 30-day public comment period, EPA will publish a timely withdrawal of this direct final notice of partial deletion before the effective date of the partial deletion and it will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to partially delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

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

Dated: October 22, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

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

PART 300—[AMENDED]

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

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

APPENDIX B—[AMENDED]

■ 2. Table 1 of Appendix B to part 300 is amended by revising the entry under ''California Gulch, CO'' to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1—GENERAL SUPERFUND SECTION

State	Site name	City/County	Notes (a)
*	*	*	*
CO	California Gulch	Leadville	P
*	*	*	*

(a) * * *
*P = Sites with partial deletion(s).

[FR Doc. E9–26952 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2009–0032; Notice No. 2]

RIN 2130–AC05

State Highway-Rail Grade Crossing Action Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Removal of direct final rule provisions.

SUMMARY: On September 2, 2009, FRA published a direct final rule in the **Federal Register** requiring the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. FRA received one adverse comment regarding the direct final rule. Under FRA regulations, FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the **Federal Register;** however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn before its effective date. As a result, FRA is now publishing this removal of the direct final rule provisions, which removes the changes effected by the direct final rule. In a separate document publishing elsewhere in this issue of the **Federal Register,** FRA is publishing a Notice of Proposed Rulemaking (NPRM).

DATES: This removal of the direct final rule becomes effective on November 13, 2009.

Docket Information: Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC

between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1200 New Jersey Ave., SE., RRS–23, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6299), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTAL INFORMATION:

I. Withdrawal of Direct Final Rule

Pursuant to FRA's direct final rulemaking procedures set forth at 49 CFR 211.33, FRA published a direct final rule in the **Federal Register** on September 2, 2009 (74 FR 45336). FRA received one adverse comment regarding the direct final rule. Pursuant to 49 CFR 211.33(d), FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the **Federal Register;** however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn before its effective date. As a result, FRA is now publishing this removal of the direct final rule provisions, which removes the changes effected by the direct final rule. In addition, in a separate document, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register.**

As discussed, this removal returns the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect. As noted, pursuant to 49 CFR 211.33(d), the direct final rule could have been removed with a notice of withdrawal; however, due to time constraints, such a notice was not published prior to the direct final rule going into effect. Moreover, FRA is contemporaneously publishing a proposed rule providing notice and comment regarding these same revisions in this issue of the **Federal Register.** Consequently, FRA believes that it is appropriate for this removal to become effective on the date of its publication, and that notice and comment in this instance is unnecessary.

II. Section-by-Section Analysis

FRA believes that a section-by-section analysis is not necessary in this document. As noted, FRA's direct final rulemaking procedures set forth at 49 CFR 211.33 require FRA to withdraw a direct final rule where an adverse comment is submitted. In order to comply with these procedures, FRA is now publishing this removal in order to return the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect (November 2, 2009). In addition, as noted, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register** regarding these same provisions.

III. Regulatory Impact and Notices

FRA likewise believes that a regulatory impact and notices discussion is not necessary in this document. Again, in order to comply with its direct final rulemaking procedures, FRA is now publishing this removal in order to return the regulatory text revised by the direct final rule to its formulation prior to the direct final rule going into effect (November 2, 2009). Moreover, FRA is contemporaneously publishing an NPRM in this issue of the **Federal Register,** which provides notice of the changes originally existing in the direct final rule, while also including a complete discussion regarding regulatory impact.

List of Subjects in 49 CFR Part 234

Highway safety; Penalties; Railroad safety; and Reporting and recordkeeping requirements.

The Rule

■ In consideration of the foregoing, FRA amends part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY

■ 1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. The heading for part 234 is revised to read as set forth above.

■ 3. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

■ 4. Section 234.3 is revised to read as follows:

§ 234.3 Application.

This part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; *i.e.,* its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, *i.e.,* its operations are within 30 feet of those of any railroad.

■ 5. Section 234.4 is revised to read as follows:

§ 234.4 Preemptive effect.

Under 49 U.S.C. 20106 (formerly § 205 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 434)), issuance of these regulations preempts any State law, rule, regulation, order, or standard covering the same subject matter, except a provision directed at an essentially local safety hazard that is consistent with this part and that does not impose an undue burden on interstate commerce.

■ 6. Section 234.6 is revised to read as follows:

§ 234.6 Penalties.

(a) *Civil Penalty.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation,

except that: penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal Penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Subpart B—Reports

■ 7. The heading to Subpart B—Reports and Plans is revised to read as set forth above.

§ 234.11 [Removed]

■ 8. Section 234.11 is removed.

Issued in Washington, DC, on November 5, 2009.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–27241 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2009–0175]

RIN 2127–AK62

Federal Motor Vehicle Safety Standards; Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final Rule; partial response to petitions for reconsideration.

SUMMARY: On July 27, 2009, NHTSA published a final rule that amended the Federal motor vehicle safety standard for air brake systems by requiring substantial improvements in stopping distance performance. In response, the agency received eight petitions for reconsideration. This document responds to those petitions by correcting errors in a table published in the final rule, removing a testing specification, and adjusting the compliance date for a small number of vehicles the agency had not fully accounted for in the final rule. This document provides a partial response to the submitted petitions for reconsideration.

DATES: This final rule is effective November 24, 2009.

Petitions for reconsideration: Petitions for reconsideration of this final rule must be received not later than December 28, 2009.

ADDRESSES: Any petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Docket Room W12–140, Washington, DC 20590.

The petition will be placed in the docket. Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, 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).

FOR FURTHER INFORMATION CONTACT: *For technical issues:* Jeff Woods, Office of Crash Avoidance Standards (NVS–121), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–0098) (*Fax:* (202) 366–7002).

For legal issues: Ari Scott, Office of the Chief Counsel (NCC–112), NHTSA, 1200 New Jersey Avenue, SE., West Building, Washington, DC 20590 (*Telephone:* (202) 366–2992) (*Fax:* (202) 366–3820).

SUPPLEMENTARY INFORMATION:

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I. Background

On July 27, 2009, NHTSA published a final rule [1] in the **Federal Register** (74 FR 37122) amending Federal Motor Vehicle Safety Standard (FMVSS) No. 121, *Air Brake Systems,* to require improved stopping distance performance for heavy truck tractors. This rule reduced the maximum allowable stopping distance, from 60 mph, from 355 feet to 250 feet for the vast majority of heavy truck tractors. For a small minority of very heavy tractors, the maximum allowable stopping distance was reduced from 355 feet to 310 feet. Having come to the conclusion that modifications needed for ''typical three-axle tractors,'' to meet the improved requirements were relatively straightforward, NHTSA provided two years lead time for those vehicles to comply with the new requirements. These typical three-axle tractors comprise approximately 82 percent of the total fleet of heavy tractors. The agency concluded that other tractors, which are produced in far fewer numbers and may require additional work to ensure stability and control while braking, would require more lead time to meet the requirements. Due to extra time needed to design, test, and validate these vehicles, which included two-axle tractors and severe service tractors, the agency allowed four years lead time for these tractors to meet the improved stopping distance requirements.

[1] Docket # NHTSA–2009–0083.

II. Petitions for Reconsideration and Agency Analysis

NHTSA received eight timely petitions for reconsideration in response to the final rule. Separate petitions were received from the Truck Manufacturers Association (TMA); the Heavy Duty Brake Manufacturers Council of the Heavy Duty Manufacturers Association (HDBMC); Bendix Spicer Foundation Brake LLC (Bendix), a joint venture between Bendix Commercial Vehicle Systems and Dana Corporation; and ArvinMeritor. The agency received four additional petitions supporting and incorporating the TMA petition by reference from Daimler Trucks North America (Daimler); Kenworth Truck Company (Kenworth); Peterbilt Motors Company (Peterbilt); and Navistar Truck Group (Navistar).

The petitions focused on four main issues, as well as identified some typographical errors in the final rule. The main issues included the stopping distance requirements for reduced speeds, the omission of four-axle tractors under 59,600 pounds gross vehicle weight rating (GVWR) from the listed requirements and the date at which the improved stopping distance requirements should apply to those tractors, the manner in which NHTSA characterized the typical three-axle tractor, and the fuel tank fill level testing specification. Additionally, the petitioners requested that NHTSA correct some typographical errors in the regulatory text.

This final rule addresses all issues except those relating to stopping distance requirements at reduced speeds. With regard to that issue, the agency is closely examining the petitions and working to formulate a comprehensive response. However, we are addressing the other issues in this document. The reason for this two-part approach is that, because the agency omitted to address lead time requirements for tractors with four or more axles and a GVWR of 59,600 pounds or less, and given the way this final rule was drafted the amended regulation inadvertently requires these vehicles to comply with the upgraded stopping distance requirements on November 24, 2009. We recognize that this would not provide nearly enough time to design and validate compliant tractors, and as the agency intended to provide sufficient time to modify these vehicles in the final rule, a prompt amendment is needed to correct this omission. The specific issues of the petitions are addressed below.

A. Four-Axle Tractors With a GVWR Less Than or Equal to 59,600 Pounds

In the final rule, the agency omitted addressing a compliance date for tractors with four or more axles that have a GVWR of less than or equal to 59,600 pounds. Moreover, given the way the final rule was drafted, these tractors would inadvertently be required to comply with the requirements in Table II on November 24, 2009. Manufacturers were given either a two- or four-year lead time before all other tractors were required to meet the improved stopping distances in Table II. Specifically, typical three-axle tractors are required to comply with the upgraded requirements on August 1, 2011, while all other tractors are required to comply on August 1, 2013.

The issue of lead time for tractors with four or more axles less than or equal to 59,600 pounds GVWR was raised by a number of petitioners. TMA noted their omission, and requested that NHTSA amend the rule so that these tractors are required to comply with the improved stopping distances on August 1, 2013, which would provide four years lead time. HDBMC made an identical request. Bendix also noted the omission, although did not provide a recommended lead time.

It was not the agency's intention to omit tractors with four or more axles and a GVWR of 59,600 pounds or less from the optional requirements of Table IIa, and therefore require them to comply with the upgraded requirements in November 2009. Instead, the agency acknowledges that these tractors require lead time commensurate with other non-typical tractors for purposes of design, testing, and validation. Therefore, for the reasons discussed below, NHTSA is accepting the recommendation of TMA, HDBMC, and Bendix, and requiring compliance with the improved standards for tractors with four or more axles and a GVWR of less than or equal to 59,600 pounds by August 1, 2013, thereby giving four years of lead time.

In deciding to allow four years of lead time, instead of two years, the agency used the same rationale concerning appropriate lead time as that discussed in the final rule. In the rule, we allowed two years of lead time for typical three-axle tractors because we believed that the improvements needed to shorten the stopping distances to meet the new requirements were relatively straightforward, and that many of these tractors would already comply with the new standards. On the other hand, we allowed four years lead time for two-axle tractors and severe service tractors (defined as tractors with a GVWR of more than 59,600 pounds) for several reasons. First, for some tractors, we believed that meeting the improved stopping distances might require additional engineering to address concerns with stability and control issues. Second, we noted that unlike ''typical'' three-axle tractors, which comprise the overwhelming bulk of the tractor fleet, relatively less design work had been done on non-typical tractors, and that more time would be needed for design, testing, and validation of new tractor designs. Specifically, in the section of the final rule dealing with lead time, we stated:

> [O]nly limited development work relevant to reduced stopping distance has been performed on [severe service tractors] vehicles to date. As several commenters indicated, additional lead time is needed for complete testing and validation of new brake systems for these vehicles to ensure that full compliance can be achieved, without compromising control, stability, and comfort elements important to end users.[2]

Much like severe service tractors, only limited development work relevant to reduced stopping distance has been performed on tractors with four or more axles and a GVWR of less than or equal to 59,600 pounds. The agency believes that this tractor configuration would be uncommon, because it has a relatively low GVWR and is equipped with four axles. By virtue of it having four axles, we consider that it is not a typical three-axle tractor and it should be afforded more lead time for design, testing, and validation to meet the new stopping distance requirements. Therefore, we believe that manufacturers of these tractors should be given until August 1, 2013 to meet the improved stopping distance requirements.

B. Definition of Typical Three-Axle Tractors

TMA and ArvinMeritor raised a concern regarding the manner in which NHTSA defined ''typical three-axle tractor'' in the final rule. TMA stated that there was a slight, but substantive, discrepancy between how NHTSA defined this term in the preamble of the final rule, and how it defined it in the regulatory text of the standard. Because of this discrepancy, TMA and ArvinMeritor claim that NHTSA puts some tractors with severe service characteristics into the category of typical three-axle tractors, and thus only allows two years lead time to meet the improved standards, when it should actually allow manufacturers of those tractors four years of lead time. After

[2] 74 FR 37154.

carefully reviewing the TMA and ArvinMeritor petitions, NHTSA agrees and is revising the standard to reflect this, for the reasons described below.

In the final rule, NHTSA made the following statement regarding the definition of three-axle tractors:

> NHTSA used the same definition for a ''typical three-axle tractor'' as TMA and HDBMC, which is a 6x4 configuration (three axles with six wheel positions; a non-driven steer axle and two rear drive axles) with a GVWR below 59,600 pounds, a steer axle with a GAWR equal or less than 14,600 pounds, and tandem drive axles rated equal or less than 45,000 pounds total capacity.[3]

This definition was important, because NHTSA treated typical three-axle tractors differently than other tractors, by providing manufacturers less lead time to meet the improved requirements for these tractors than other tractors. As we stated, ''NHTSA is specifying differing compliance dates for typical three-axle tractors on the one hand, and two-axle and severe service tractors on the other.'' [4] However, in the text of the regulation, NHTSA used a shorthand method of referring to these tractors that, TMA and ArvinMeritor point out, includes some tractors that should not be included. Specifically, the text of the regulation required that ''three-axle tractors with a GVWR of 59,600 pounds or less'' [5] are required to comply with the improved requirements by August 1, 2011.

By using the overall GVWR of the tractor in the regulation, as opposed to specifying the gross axle weight rating (GAWR) of the specific axles, NHTSA incorporated some tractors into the category of ''typical three-axle tractors'' that should not have been included. For example, according to the definition in the preamble, a tractor with a steer axle with a GAWR of 18,000 pounds and combined drive axle GAWRs of 40,000 pounds would not be considered a typical three-axle tractor. We note that, for a tractor of this configuration, the high steer axle weight rating is consistent with severe service duty. However, because the vehicle would have a GVWR of 58,000 pounds, it would be considered a typical three-axle tractor using the ''less than or equal to 59,600 pounds GVWR'' classification in the regulation.

We believe that the definition of ''typical three-axle tractors'' should be limited to those tractors that meet the definition in the preamble of the final rule—that is—have a steer axle GAWR of 14,600 pounds or less and a combined drive axle GAWR of 45,000 pounds or less. NHTSA is aware that a small number of three-axle tractors, used in some specialty applications, have heavier steer axles. Much like other tractors produced in lower volumes, only limited development work has been done on these tractors. Therefore, we believe that manufacturers of those tractors require additional lead time to design, test, and validate improved braking systems on these tractors. For this reason, we are modifying the category of vehicles subject to the two-year lead time to three-axle tractors with a front axle (steer axle) less than or equal to 14,600 pounds GAWR, and a combined GAWR for the rear two axles (drive axles) less than or equal to 45,000 pounds. This more precise classification will encompass the typical three-axle tractors NHTSA that NHTSA intended it to encompass, without unintentionally including a subset of non-typical tractors.

C. Fuel Tank Loading Specification

In the final rule, NHTSA added a provision to FMVSS No. 121 specifying the level of fuel in the fuel tank is 100 percent of rated capacity at the beginning of testing, and that the level is not less than 75 percent of rated capacity during any part of the brake testing. We stated that we believed that specifying this will reduce test variability. In its petition, TMA requested that NHTSA rescind the fuel tank loading specification, both for substantive and procedural reasons. First, TMA raised a procedural objection, arguing that NHTSA did not provide adequate notice in the notice of proposed rulemaking (NPRM) that it was considering adding a fuel tank fill specification. Second, TMA argued that because tractors are configured with a wide range of fuel storage options, specifying the level of fuel carried by the vehicle as a proportion of the tank(s) may not reduce test variability. Third, TMA stated that the fuel specification may result in test complications in certain circumstances, such that a tractor with a front axle that is already close to its rated load capacity in the bobtail condition can have the front axle weight rating exceeded when the additional weight of a roll bar and test equipment is combined with full fuel tanks.

NHTSA has considered TMA's petition on this issue, and has decided to remove the fuel tank fill specification from the text of the regulation. This decision is based on the procedural question of notice alone. Having re-examined the NPRM, we agree that the NPRM did not propose a specification for filling the fuel tanks.

In these circumstances, we believe it is appropriate to briefly address a number of the applicable test conditions as they currently exist, and will continue to exist after the fuel tank specification is removed. FMVSS No. 121 specifies vehicle weight conditions for its test requirements, and, in conducting a compliance test, NHTSA follows those conditions as it does other test conditions included in the standard.

FMVSS No. 121 specifies various requirements that vehicles must meet in loaded and lightly loaded conditions, including stopping distance requirements. S5.3.1 refers to Table I. Table I, Stopping Sequence, of FMVSS No. 121 provides that certain tests (including stopping distance tests) are conducted with the vehicle at its gross vehicle weight rating (GVWR), and certain tests are conducted with the vehicle at lightly loaded vehicle weight (LLVW).

As to the loaded tests, GVWR is a term that is defined at 49 CFR 571.3. We also note that the standard specifies various other conditions related to weight for the loaded tests.

Lightly loaded vehicle weight is determined by adding specified additional weight to a vehicle's unloaded vehicle weight.[6] The term unloaded vehicle weight is defined at 49 CFR 571.3, and means the weight of a vehicle with maximum capacity of all fluids necessary for operation of the vehicle, but without cargo, occupants, or accessories that are ordinarily removed from the vehicle when they are not in use. It thus includes the weight of full fuel tanks.

For the stopping distance tests in a lightly loaded weight condition, up to 500 pounds weight (including driver and instrumentation) is added to the vehicle's unloaded vehicle weight. At the manufacturer's option, an additional amount of weight that is not more than 1000 pounds may be added for a roll bar structure. *See* S5.3.1.1 (b) and (c). We note that while different terminology is used in some cases in these paragraphs with respect to a vehicle's unloaded weight, in a short hand fashion, the meaning is the same. Thus, ''unloaded weight'' in the latter portions of paragraphs (b) and (c) of S5.3.1.1 of FMVSS No. 121 has the same meaning as ''unloaded vehicle weight,'' and the reference to ''tractor only configuration'' at the beginning of (b) has the same meaning as ''unloaded vehicle weight.''

TMA raised a concern about the possible situation of the combined

[3] 74 FR 37131.

[4] 74 FR 37154.

[5] *See* paragraph S5 of 49 CFR 571.121.

[6] *See* S4 of 49 CFR 571.105.

weight of full fuel tanks, driver and instrumentation, and a roll bar resulting in a vehicle's front axle rating being exceeded. TMA has not demonstrated that there is a problem. The regulation has been in place for years, and we have not encountered any problems. Roll bars are a manufacturer option that manufacturers are not required to select, and manufacturers can design their vehicles in ways to avoid this possible problem.

Moreover, as we have explained on a number of occasions, manufacturers are not required to test their products in the manner specified in the relevant safety standard, or even to test the product at all, as their basis for certifying that the product complies with all applicable standards. A manufacturer may choose any valid means of evaluating its products to determine whether the vehicle or equipment will comply with the safety standards when tested by the agency according to the procedures specified in the standard and to provide a basis for its certification of compliance. Thus, a truck tractor manufacturer may certify that a vehicle will comply with the lightly loaded option in S5.3.1.1(b) of FMVSS No. 121 that does not include the weight of a roll bar without testing in that specific manner.

D. Typographical Corrections

All petitioners pointed out two typographical errors that appeared in the regulatory text of the final rule. First, it was pointed out that two-axle tractors were mistakenly omitted from the ''notes'' portion of Table II. All petitioners stated that two-axle tractors should be added to the note for column three. Second, all petitioners pointed out that note three, which at one point reads ''Four of more axles,'' should read ''Four or more axles.'' NHTSA is changing the tables in the regulatory text to reflect the changes discussed in this response to petitions for reconsideration, and will correct these errors in that process.

E. Stopping Distances at Reduced Test Speeds

TMA, HDBMC, and Bendix raised concerns with the new stopping distance requirements for tractors that would be subjected to brake testing from initial speeds below 60 mph. Requirements in FMVSS No. 121 provide that if the speed attainable by a tractor in a distance of two miles is less than 60 mph, the vehicle shall stop from a speed in Table II that is four to eight mph less than the speed attainable in two miles. In the final rule, the agency discussed its derivation of the stopping distances for reduced test speeds associated with the new 250-foot, 60 mph stopping distance requirement in Table II.

Several petitioners raised questions regarding the agency's method of calculating the required stopping distance at reduced speeds. HDBMC stated that the new stopping distances had not been validated by testing at reduced speeds, and stated that limited initial testing by HDBMC members showed that tractors were close to meeting, or did not meet, the 20 mph, 30-foot stopping distance with a ten-percent margin of compliance. HDBMC stated that additional testing is planned and that it will share this data with the agency when it is available. TMA and Bendix similarly stated that further testing needs to be completed to verify the calculations used to determine the stopping distances, and TMA requested that the agency withdraw the reduced speed stopping distances until it obtains more test data supporting the new requirements.

The agency concludes that it will need more time to complete an analysis of this issue and therefore we are not addressing it in this document, but we will do so in a subsequent response to petitions for reconsideration.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This action partially responds to petitions for reconsideration regarding the July 27, 2009 final rule amending FMVSS No. 121. It was not reviewed by the Office of Management and Budget under E.O. 12866. The agency has considered the impact of this action under the Department of Transportation's regulatory policies and procedures (44 FR 11034; February 26, 1979), and has determined that it is not ''significant'' under them.

This final rule, partial response to petitions for reconsideration corrects a table, adjusts the compliance date for a small number of truck tractors not fully accounted for in the final rule, and removes a testing specification. Today's action will not cause any additional expenses for vehicle manufacturers, and will reduce some costs by allowing longer compliance time for a small number of truck tractors, thereby allowing a more reasonable schedule for improved brake design and validation. Due to the relatively small number of tractors affected and the fact that this is merely a change in the compliance dates, the action will not have any significant safety impacts.

B. Privacy Act

Anyone is able to search the electronic form of all documents received into any of our dockets by the name of the individual submitting the document (or signing the document, 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://docketsinfo.dot.gov/.*

C. Other Rulemaking Analyses and Notices

In the July 27 final rule, the agency discussed relevant requirements related to the Regulatory Flexibility Act, the National Environmental Policy Act, Executive Order 13132 (Federalism), the Unfunded Mandates Reform Act, Civil Justice Reform, the National Technology Transfer and Advancement Act, the Paperwork Reduction Act, and Executive Order 13045 (Protection of Children from Environmental Health and Safety Risks). As today's rule merely makes minor changes in the lead time and test conditions, it will not have any effect on the agency's analyses in those areas.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

IV. Regulatory Text

■ In consideration of the foregoing, NHTSA is amending 49 CFR Part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.121 is amended by revising S5, removing S6.1.18, and revising Tables II and IIa to read as follows:

§ 571.121 Standard No. 121; Air brake systems.

* * * * *

S5. *Requirements.* Each vehicle shall meet the following requirements under the conditions specified in S6. However, at the option of the manufacturer, the following vehicles may meet the stopping distance requirements specified in Table IIa instead of Table II: Three-axle tractors with a front axle that has a GAWR of 14,600 pounds or less, and with two rear axles that have a combined GAWR of 45,000 pounds or

less, that are manufactured before August 1, 2011; and all other tractors that are manufactured before August 1, 2013.

* * * * *

TABLE II—STOPPING DISTANCE IN FEET

Vehicle speed in miles per hour	Service brake						Emergency brake	
	PFC	PFC	PFC	PFC	PFC	PFC	PFC	PFC
	0.9 (1)	0.9 (2)	0.9 (3)	0.9 (4)	0.9 (5)	0.9 (6)	0.9 (7)	0.9 (8)
20	32	35	30	35	38	28	83	85
25	49	54	45	54	59	43	123	131
30	70	78	65	78	84	61	170	186
35	96	106	89	106	114	84	225	250
40	125	138	114	138	149	108	288	325
45	158	175	144	175	189	136	358	409
50	195	216	176	216	233	166	435	504
55	236	261	212	261	281	199	520	608
60	280	310	250	310	335	235	613	720

Note:
(1) Loaded and Unloaded Buses.
(2) Loaded Single-Unit Trucks.
(3) Loaded Tractors with Two Axles; or with Three Axles and a GVWR of 70,000 lbs. or less; or with Four or More Axles and a GVWR of 85,000 lbs. or less. Tested with an Unbraked Control Trailer.
(4) Loaded Tractors with Three Axles and a GVWR greater than 70,000 lbs.; or with Four or More Axles and a GVWR greater than 85,000 lbs. Tested with an Unbraked Control Trailer.
(5) Unloaded Single-Unit Trucks.
(6) Unloaded Tractors (Bobtail).
(7) All Vehicles except Tractors, Loaded and Unloaded.
(8) Unloaded Tractors.

TABLE IIA—STOPPING DISTANCE IN FEET: OPTIONAL REQUIREMENTS FOR: (1) THREE-AXLE TRACTORS WITH A FRONT AXLE THAT HAS A GAWR OF 14,600 POUNDS OR LESS, AND WITH TWO REAR AXLES THAT HAVE A COMBINED GAWR OF 45,000 POUNDS OR LESS, MANUFACTURED BEFORE AUGUST 1, 2011; AND (2) ALL OTHER TRACTORS MANUFACTURED BEFORE AUGUST 1, 2013

Vehicle speed in miles per hour	Service brake				Emergency brake	
	PFC	PFC	PFC	PFC	PFC	PFC
	0.9 (1)	0.9 (2)	0.9 (3)	0.9 (4)	0.9 (5)	0.9 (6)
20	32	35	38	40	83	85
25	49	54	59	62	123	131
30	70	78	84	89	170	186
35	96	106	114	121	225	250
40	125	138	149	158	288	325
45	158	175	189	200	358	409
50	195	216	233	247	435	504
55	236	261	281	299	520	608
60	280	310	335	355	613	720

Note: (1) Loaded and unloaded buses; (2) Loaded single unit trucks; (3) Unloaded truck tractors and single unit trucks; (4) Loaded truck tractors tested with an unbraked control trailer; (5) All vehicles except truck tractors; (6) Unloaded truck tractors.

* * * * *

Issued: November 6, 2009.

Ronald L. Medford,

Acting Deputy Administrator.

[FR Doc. E9–27231 Filed 11–9–09; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 050613158–5262–03]

RIN 0648–AT48

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Extension of Emergency Fishery Closure Due to the Presence of the Toxin that Causes Paralytic Shellfish Poisoning

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency action; extension of effective period; request for comments.

SUMMARY: This temporary rule extends a closure of Federal waters. The FDA has determined that oceanographic conditions and alga sampling data suggest that the northern section of the Temporary Paralytic Shellfish Poison (PSP) Closure Area remain closed to the harvest of bivalve molluscan shellfish, with the exception of sea scallop adductor muscles harvested and shucked at sea, and that the southern area remain closed to the harvest of whole or roe-on scallops. The regulations contained in the temporary rule, emergency action, first published in 2005, and have been subsequently extended several times at the request of the U.S. Food and Drug Administration (FDA). NMFS is publishing the regulatory text associated with this closure in this temporary emergency rule in order to ensure that current regulations accurately reflect the codified text that has been modified and extended numerous times, so that the public is aware of the regulations being extended.

DATES: The amendments to § 648.14, in amendatory instruction 2, are effective January 1, 2010. The amendments to § 648.14, in amendatory instruction 3, are effective from January 1, 2010, through December 31, 2010. The expiration date of the temporary emergency action published on December 30, 2008 (73 FR 79720), is extended through December 31, 2010. Comments must be received by December 14, 2009.

ADDRESSES: Copies of the Small Entity Compliance Guide, the emergency rule, the Environmental Assessment, and the Regulatory Impact Review prepared for the October 18, 2005, reinstatement of the September 9, 2005, emergency action and subsequent extensions of the emergency action, are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, 55 Great Republic Drive, Gloucester, MA 01930. These documents are also available via the internet at *http://www.nero.noaa.gov/nero/hotnews/redtide/index.html.*

You may submit comments, identified by RIN 0648–AT48, by any one of the following methods:

- Mail: Patricia A. Kurkul, Regional Administrator, Northeast Region, NMFS, 55 Great Republic Drive, Gloucester, MA 01930–2298. Mark on the outside of the envelope, ''Comments on PSP Closure.''
- Fax: (978) 281–9135.
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*.

Instructions: No comments will be posted for public viewing until after the comment period has closed. All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Anna Macan, Fishery Management Specialist, phone: (978) 281–9165, fax: (978) 281–9135.

SUPPLEMENTARY INFORMATION:

Background

This emergency closure is being implemented at the request of the FDA after samples of shellfish from the inshore and offshore waters off the coasts of New Hampshire and Massachusetts tested positive for the presence of toxins (saxotoxins) that cause PSP. These toxins are produced by the alga *Alexandrium fundyense*, which can form blooms commonly referred to as red tides. Current oceanographic conditions and alga, sampling data suggest that the northern section of the Temporary PSP Closure Area should remain closed to the harvest of bivalve molluscan shellfish, with the exception of sea scallop adductor muscles harvested and shucked at sea, and that the southern area should remain closed to the harvest of whole or roe-on scallops. Red tide blooms, also known as harmful algal blooms (HABs), can produce toxins that accumulate in filter-feeding shellfish. Shellfish contaminated with the toxin, if eaten in large enough quantity, can cause illness or death from PSP.

In 2005, the FDA first requested that NMFS close an area of Federal waters off the coasts of New Hampshire and Massachusetts to fishing for bivalve shellfish intended for human consumption. On June 16, 2005, NMFS published an emergency rule (70 FR 35047) closing the area recommended by the FDA (i.e., the Temporary PSP Closure Area). Since 2005, the closure has been extended several times and the area has been expanded and divided into northern and southern components. The Northern Temporary PSP Closure Area remained closed to the harvest of all bivalve molluscan shellfish, while the Southern Temporary PSP Closure Area was reopened to the harvest of Atlantic surfclams, ocean quahogs, as sea scallop adductor muscles harvested and shucked at sea. The current closure will expire on December 31, 2009, and this action extends this closure for one additional year, through December 31, 2010.

The boundaries of the northern component of the Temporary PSP Closure Area comprise Federal waters bounded by the following coordinates specified in Table 1, below. Under this emergency rule, this area remains closed to the harvest of Atlantic surfclams, ocean quahogs, and whole or roe-on scallops.

TABLE 1: COORDINATES FOR THE NORTHERN TEMPORARY PSP CLOSURE AREA

Point	Latitude	Longitude
1	43°00′N	71°00′W
2	43°00′N	69°00′W
3	41°39′N	69°00′W
4	41°39′N	71°00′W
5	43°00′N	71°00′W

The boundaries of the southern component of the Temporary PSP Closure Area comprise Federal waters bound by the following coordinates

specified in Table 2. Under this emergency rule, the Southern Temporary PSP Closure Area remains closed only to the harvest of whole or roe-on scallops.

TABLE 2: COORDINATES FOR THE SOUTHERN TEMPORARY PSP CLOSURE AREA

Point	Latitude	Longitude
1	41°39′N	71°00′W
2	41°39′N	69°00′W
3	40°00′N	69°00′W
4	40°00′N	71°00′W
5	41°39′N	71°00′W

Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1855(c). Pursuant to section 5 U.S.C. 553(b)(B) of the Administrative Procedure Act, the Assistant Administrator for Fisheries finds there is good cause to waive prior notice and an opportunity for public comment on this action as notice and comment would be impracticable and contrary to the public interest due to a public health emergency, and public comment has been solicited concurrently with each of the extensions of this action, as detailed and responded to below. In addition, under section 553(d)(3) there is good cause to waive the 30-day delay in effectiveness due to a public health emergency. Consultation with the FDA concerning the extension of this action beyond the December 31, 2009, expiration date continued through October 2009, making it impossible to first publish this action as a proposed rule and provide for a 30-day delay of effectiveness. The original emergency closure was in response to a public health emergency. Toxic algal blooms are responsible for the marine toxin that causes PSP in persons consuming affected shellfish. People have become seriously ill and some have died from consuming affected shellfish under similar circumstances. Pursuant to section 305(c)(3)(C) of the Magnuson-Stevens Act, the closure to the harvest of shellfish, as modified on September 9, 2005, and re-instated on October 18, 2005, may remain in effect until the circumstances that created the emergency no longer exist, provided the public has had an opportunity to comment after the regulation was published, and, in the case of a public health emergency, the Secretary of Health and Human Services concurs with the Commerce Secretary's action. During the initial comment period, June 16, 2005, through August 1, 2005, no comments were received. One comment was received after the re-opening of the southern component of the Temporary PSP Closure Area on September 9, 2005. The commenter expressed reluctance to re-opening a portion of the closure area without seeing the results of the FDA tests. Data used to make determinations regarding closing and opening of areas to certain types of fishing activity are collected from Federal, state, and private laboratories. NOAA maintains a Red Tide Information Center (*http://www.cop.noaa.gov/news/fs/ne_hab_200605.html*), which can be accessed directly or through the website listed in the **ADDRESSES** section. Information on test results, modeling of algal bloom movement, and general background on red tide can be accessed through this information center. While NMFS is the agency with the authority to promulgate the emergency regulations, it modified the regulations on September 9, 2005, at the request of the FDA, after the FDA determined that the results of its tests warranted such action. If necessary, the regulations may be terminated at an earlier date, pursuant to section 305(c)(3)(D) of the Magnuson-Stevens Act, by publication in the **Federal Register** of a notice of termination, or extended further to ensure the safety of human health.

This emergency action is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and opportunity for public comment.

This rule is not significant for the purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: November 6, 2009

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 648 is amended to read as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 648.14 [Amended]

■ 2. In § 648.14, paragraphs (a)(10)(iii) and (a)(10)(iv) are removed.

■ 3. In § 648.14, paragraphs (a)(10)(iii) and (a)(10)(iv) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(10) * * *

(iii) Fish for, harvest, catch, possess or attempt to fish for, harvest, catch, or possess any bivalve shellfish, including Atlantic surfclams, ocean quahogs, and mussels, with the exception of sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing the collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 43°00′N. lat., 71°00′W. long.;

(B) 43°00′N. lat., 69°00′ W. long.;

(C) 41°39′N. lat., 69°00′W. long;

(D) 41°39′N. lat., 71° 00′W. long.; and then ending at the first point.

(iv) Fish for, harvest, catch, possess, or attempt to fish for, harvest, catch, or possess any sea scallops, except for sea scallops harvested only for adductor muscles and shucked at sea, unless issued and possessing on board a Letter of Authorization (LOA) from the Regional Administrator authorizing collection of shellfish for biological sampling and operating under the terms and conditions of said LOA, in the area of the U.S. Exclusive Economic Zone bound by the following coordinates in the order stated:

(A) 41°39′N. lat., 71°00′W. long.;

(B) 41°39′N. lat., 69°00′W. long.;

(C) 40°00′N. lat., 69°00′W. long.;

(D) 40°00′N. lat., 71°00′W. long.; and then ending at the first point.

* * * * *

[FR Doc. E9–27320 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 218
Friday, November 13, 2009

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 71

[Docket No. FAA–2009–0949; Airspace Docket No. 09–ANM–12]

Proposed Establishment and Modification of Class E Airspace; Gunnison, CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E surface airspace and modify existing Class E airspace at Gunnison-Crested Butte Regional Airport, Gunnison, CO. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) at Gunnison-Crested Butte Regional Airport, Gunnison, CO. The FAA is proposing this action to enhance the safety and management of aircraft operations at Gunnison-Crested Butte Regional Airport, Gunnison, CO. This action also would update the airport name from Gunnison County Airport.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0949; Airspace Docket No. 09–ANM–12, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0949 and Airspace Docket No. 09–ANM–12) and be submitted in triplicate to the Docket Management System (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0949 and Airspace Docket No. 09–ANM–12''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (see the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace designated as surface areas, and modify existing Class E airspace extending upward from 700 feet above the surface, at Gunnison-Crested Butte Regional Airport, Gunnison, CO. Controlled airspace is necessary to accommodate aircraft using the new RNAV SIAP at Gunnison-Crested Butte Regional Airport, Gunnison, CO. This action would enhance the safety and management of aircraft operations at Gunnison-Crested Butte Regional Airport, Gunnison, CO. This would also update the airport name from Gunnison County Airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would establish additional controlled airspace at Gunnison-Crested Butte Regional Airport, Gunnison, CO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002 Class E airspace designated as surface areas.

* * * * *

ANM CO E2 Gunnison, CO [New]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′02″ N., long. 106°55′59″ W.)

Within a 4.5-mile radius of the Gunnison-Crested Butte Regional Airport. This Class E airspace area is effective during the specific dates and times established by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM CO E5 Gunnison, CO [Modified]

Gunnison-Crested Butte Regional Airport, CO (Lat. 38°32′02″ N., long. 106°55′59″ W.)

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 38°10′00″ N., long. 107°10′00″ W.; to lat. 38°21′25″ N., long. 107°25′00″ W.; to lat. 38°24′30″ N., long. 107°21′00″ W.; lat. 38°33′30″ N., long. 107°20′00″ W.; to lat. 38°21′25″ N., long. 107°12′30″ W.; to lat. 38°44′00″ N., long. 106°58′00″ W.; to lat. 38°34′00″ N., long. 106°40′00″ W.; thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within an area bounded by a line beginning at lat. 37°59′30″ N., long. 107°16′00″ W.; to lat. 38°17′45″ N., long. 107°39′00″ W.; to lat. 38°51′00″ N., long. 107°00′10″ W.; to lat. 38°16′40″ N., long. 106°08′00″ W.; to lat. 38°09′00″ N., long. 106°16′00″ W.; to lat. 38°18′30″ N., long. 106°47′00″ W.; thence to the point of beginning.

* * * * *

Issued in Seattle, Washington, on *November 3, 2009.*

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–27243 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1002; Airspace Docket No. 09–ANM–18]

Proposed Establishment of Class E Airspace; Bonners Ferry, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Boundary County Airport, Bonners Ferry, ID. Controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Boundary County Airport, Bonners Ferry, ID. The FAA is proposing this action to enhance the safety and management of aircraft operations at Boundary County Airport, Bonners Ferry, ID.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–1002; Airspace Docket No. 09–ANM–18, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–1002 and Airspace Docket No. 09–ANM–18) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–1002 and Airspace Docket No. 09–ANM–18''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned

with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish Class E airspace extending upward from 700 feet above the surface at Boundary County Airport, Bonners Ferry, ID. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAPs at Boundary County Airport, Bonners Ferry, ID. This action would enhance the safety and management of aircraft operations at Boundary County Airport, Bonners Ferry, ID.

Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes additional controlled airspace at Boundary County Airport, Bonners Ferry, ID.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

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

* * * * *

ANM WA E5 Bonners Ferry, ID [New]

Boundary County Airport, ID

(Lat. 48°43′34″ N., long. 116°17′43″ W.)

That airspace extending upward from 700 feet above the surface within a 5-mile radius of Boundary County Airport, Bonners Ferry, ID.

* * * * *

Issued in Seattle, Washington, on November 3, 2009.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–27245 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0878; Airspace Docket No. 09–ASW–7]

RIN 2120–AA66

Proposed Establishment of Low Altitude Area Navigation Route (T–284); Houston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish a low altitude area navigation (RNAV) route, designated T–284, in the Houston, TX, terminal area. T-routes are low altitude Air Traffic Service routes, based on RNAV, for use by aircraft that have instrument flight rules (IFR) approved Global Positioning System (GPS)/Global Navigation Satellite System (GNSS) equipment. This action would enhance safety and improve the efficient use of the navigable airspace in the Houston, TX terminal area.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001; *telephone:* (202) 366–9826. You must identify FAA Docket No. FAA–2009–0878 and Airspace Docket No. 09–ASW–7 at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2009–0878 and Airspace Docket No. 09–ASW–7) and be submitted in triplicate to the Docket Management Facility (*see* **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0878 and Airspace Docket No. 09–ASW–7.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/air_traffic/publications/airspace_amendments/*.

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* **ADDRESSES** section for address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Central Service Center, Operations Support Group, Federal Aviation Administration, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 to establish a low altitude RNAV route in the Houston, TX, terminal area. The route, designated as T–284, would be depicted on the appropriate IFR En Route Low Altitude charts. This T-route is only intended for use by GPS/GNSS equipped aircraft and is being proposed to enhance safety and facilitate the efficient use of the navigable airspace for en route IFR operations transitioning around the Houston Class B airspace area.

Low altitude RNAV routes are published in paragraph 6011 of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The low altitude RNAV routes listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (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 proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. 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.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes a low altitude area navigation route (T-route) at Houston, Texas.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures,'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009, is amended as follows:

Paragraph 6011 Area Navigation Routes.

* * * * *

T–254 WEMAR, TX to Scholes, TX [New]

WEMAR, TX	WP	(Lat. 29°39′37″ N., long. 97°00′37″ W.)
DROPP, TX	WP	(Lat. 29°13′38″ N., long. 95°32′04″ W.)
Scholes, TX (VUH)	VORTAC	(Lat. 29°16′10″ N., long. 94°52′04″ W.)

* * * * *

Issued in Washington, DC, on November 6, 2009.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E9–27343 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0902; Airspace Docket No. 09–ANM–16]

Proposed Modification of Class E Airspace; Astoria, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify Class E airspace at Astoria Regional Airport, Astoria, OR. Additional controlled airspace is necessary to accommodate aircraft using a new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) at Astoria Regional Airport, Astoria, OR. The FAA is proposing this action to enhance the safety and management of aircraft operations at Astoria Regional Airport, Astoria, OR. This will also correct the airport name from Port of Astoria Airport.

DATES: Comments must be received on or before December 28, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Telephone (202) 366–9826. You must identify FAA Docket No. FAA–2009–0902; Airspace Docket No. 09–ANM–16, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eldon Taylor, Federal Aviation Administration, Operations Support Group, Western Service Center, 1601 Lind Avenue, SW., Renton, WA 98057; telephone (425) 203–4537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA 2009–0902 and Airspace Docket No. 09–ANM–16) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2009–0902 and Airspace Docket No. 09–ANM–16''. The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office (*see* the **ADDRESSES** section for the address and phone number) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Northwest Mountain Regional Office of the Federal Aviation Administration, Air Traffic Organization, Western Service Center, Operations Support Group, 1601 Lind Avenue, SW., Renton, WA 98057.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (14 CFR) part 71 by modifying Class E airspace at Astoria Regional Airport, Astoria, OR. Controlled airspace is necessary to accommodate aircraft using the new RNAV (GPS) SIAP at Astoria Regional Airport, Astoria, OR. This action would enhance the safety and management of aircraft operations at Astoria Regional Airport, Astoria, OR. This will also correct the name from Port of Astoria Airport.

Class E airspace designations are published in paragraph 6002 and 6005, respectively, of FAA Order 7400.9T, signed August 27, 2009, and effective September 15, 2009, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed 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 proposed rule, when promulgated, would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, describes the authority for the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes

additional controlled airspace at Astoria Regional Airport, Astoria, OR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the FAA Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, and effective September 15, 2009 is amended as follows:

Paragraph 6002. Class E airspace Designated as Surface Areas.

* * * * *

ANM OR E2 Astoria, OR [Modify]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N., long. 123°52′43″ W.)
Camp Rilea Heliport
(Lat. 46°06′59″ N., long. 123°55′54″ W.)

Within a 4-mile radius of the Astoria Regional Airport, and within 1.8 miles each side of the Astoria Regional Airport 268° bearing extending from the 4-mile radius to 7 miles west of the Astoria Regional Airport, and within 1.8 miles each side of the Astoria Regional Airport 095° bearing extending from the 4-mile radius to 12.1 miles east of the Astoria Regional Airport, excluding the airspace within a wedge south of Camp Rilea Heliport, from the 120° bearing clockwise to the 225° bearing of the Camp Rilea Heliport. This Class E airspace area is effective during the dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

ANM OR E5 Astoria, OR [Modify]

Astoria Regional Airport, Astoria, OR
(Lat. 46°09′29″ N., long. 123°52′43″ W.)
Seaside Municipal Airport
(Lat. 46°00′54″ N., long. 123°54′28″ W.)

That airspace extending from 700 feet above the surface within a 6.5-mile radius of the Astoria Regional Airport, and within 4 miles north and 8.3 miles south of the Astoria Regional Airport 268° bearing extending from the 6.5-mile radius to 15.9 miles west of the Astoria Regional Airport, excluding the portion within a 1.8-mile radius of the Seaside Municipal Airport, and within 4 miles northeast and 8.3 miles southwest of the Astoria Regional Airport 326° bearing extending from the 6.5-mile radius to 21.4 miles northwest of the Astoria Regional Airport, and within 4 miles north and 4 miles south of the Astoria Regional Airport 096° bearing extending from the 6.5-mile radius to 6 miles east of the Astoria Regional Airport, and within a 15.9-mile radius of the Astoria Regional Airport extending clockwise from the 326° bearing to the 347° bearing, and within a 23.1-mile radius of the Astoria Regional Airport extending clockwise from the 347° bearing to the 039° bearing to the 185° bearing, and, 8.3 miles north and 4 miles south of the Astoria Regional Airport 096° bearing from lat. 46°08′22″ N., long. 123°35′14″ W., to 15.9 miles east.

* * * * *

Issued in Seattle, Washington, on November 3, 2009.

Robert E. Henry,

Acting Manager, Operations Support Group, Western Service Center.

[FR Doc. E9–27244 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 53

[REG–155929–06]

RIN 1545–BG31

Payout Requirements for Type III Supporting Organizations That Are Not Functionally Integrated; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to a notice of proposed rulemaking (REG–155929–06) that was published in the **Federal Register** on Thursday, September 24, 2009. The proposed regulations provide further guidance regarding the requirements to qualify as a Type III supporting organization that is operated in connection with one or more supported organizations.

FOR FURTHER INFORMATION CONTACT: Philip T. Hackney or Don R. Spellmann at (202) 622–1124 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this document is under section 509 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking (REG–155929–06) contains an error that is misleading and is in need of clarification.

Correction to Publication

Accordingly, the notice of proposed rulemaking, published September 24, 2009 (74 FR 48672), which was the subject of FR Doc. E9–22866 is corrected as follows:

On page 48673, in the preamble, column 1, under the caption **FOR FURTHER INFORMATION CONTACT**, line 3, the language ''at (202) 622–6070; concerning'' is corrected to read ''at (202) 622–1124; concerning''.

LaNita VanDyke,

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

[FR Doc. E9–27215 Filed 11–12–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[EPA–HQ–OAR–2009–0174; FRL–8980–8]

RIN 2060–AP63

Emissions Factors Program Improvements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advanced notice of proposed rulemaking (ANPRM); extension of public comment period.

SUMMARY: On October 14, 2009, EPA published an Emissions Factors Program Improvements ANPRM to convey issues raised by stakeholders about the program, inform the public of our initial ideas to address these issues, and solicit comments on our current thinking to resolve these issues. EPA has received several requests from stakeholders to grant additional time to provide comments on the ANPRM. Given that EPA published the ANPRM specifically to obtain public comments on the emissions factors program and the potential improvements to the program, EPA finds this request to be reasonable. Thus, the comment period is being extended 30 additional days to December 14, 2009.

DATES: Comments must now be received on or before December 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2009–0174, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov.*
- *Fax:* (202) 566–9744.
- *Mail:* U.S. Postal Service, send comments to: EPA Docket Center (2822T), Emissions Factors Program Improvements Advanced Notice of Proposed Rulemaking Docket, Docket ID No. EPA–HQ–OAR–2009–0174, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* In person or by courier, deliver comments to: EPA Docket Center (2822T), Emissions Factors Program Improvements Advanced Notice of Proposed Rulemaking Docket, Docket ID No. EPA–HQ–OAR–2009–0174, EPA West, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information. Please include a total of two copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2009–0174. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA West, Room 3334, 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 Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Questions concerning the ANPRM should be addressed to Mr. Thomas Driscoll, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Measurement Policy Group (D243–05), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, *telephone number:* (919) 541–5135; *fax number:* (919) 541–1039; e-mail address: *driscoll.tom@epa.gov.*

How can I get copies of the ANPRM and other related information?

The Emissions Factors Program Improvements ANPRM was published on October 14, 2009 (74 FR 52723). You can access this document at *http://www.regulations.gov/search/Regs/home.html#documentDetail?R=0900006480a417c0.* In addition, for documents related to this rulemaking, EPA has established the official public docket for the ANPRM under Docket ID No. EPA–HQ–OAR–2009–0174. Information on how to access the docket is presented above in the **ADDRESSES** section.

Dated: November 6, 2009.

Gina McCarthy,

Assistant Administrator for Air and Radiation.

[FR Doc. E9–27302 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–8979–3]

National Oil and Hazardous Substance Pollution Contingency Plan; National Priorities List: Partial Deletion of the California Gulch Superfund Site

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of intent.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 is issuing a proposed rule, a Notice of Intent to Delete Operable Unit 8 (OU8) of the California Gulch Superfund Site (Site) located in Lake County, Colorado, from the National Priorities List (NPL) and requests public comments on this proposed action. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is an appendix of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA and the State of Colorado, through the Colorado Department of Public Health and Environment, have determined that all appropriate response actions at these identified parcels under CERCLA, other than operation, maintenance, and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

This partial deletion pertains to all of OU8 including the impounded tailing, non-residential area soils, waste rock, fluvial tailing and stream sediment. The Yak Tunnel (OU1), D&RGW Slag piles and Easement (OU3), Upper California Gulch (OU4), Asarco Smelter/Colorado Zinc-Lead Mill Site (OU5), Stray Horse Gulch (OU6), Apache Tailings (OU7), Residential Soils excluding Subunits A and B, waste rock piles, and parks and playgrounds (OU9), Arkansas River Floodplain (OU11), and Site-wide Surface and Groundwater Quality (OU12) will remain on the NPL and are not being considered for deletion as part of this action.

DATES: Comments must be received by *December 14, 2009.*

ADDRESSES:

Submit your comments, identified by Docket ID no. EPA–HQ–SFUND–1983–0002, by one of the following methods:

- *http://www.regulations.gov.* Follow on-line instructions for submitting comments.
- *E-mail:* Linda Kiefer, *kiefer.linda@epa.gov.*

- *Fax:* (303) 312–7151.
- *Mail:* Linda Kiefer, Remedial Project Manager, Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129.
- *Hand delivery:* Environmental Protection Agency, Region 8, Mail Code 8EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1983–0002. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://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.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at: U.S. EPA Region 8, Superfund Records Center, 1595 Wynkoop Street, Denver, CO 80202. (303) 312–6473 or toll free (800) 227–8917; Viewing hours: 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. Lake County Public Library, 1115 Harrison Avenue, Leadville, CO 80461, (719) 486–0569

FOR FURTHER INFORMATION CONTACT: Linda Kiefer, Remedial Project Manager, U.S. Environmental Protection Agency, Region 8, Mailcode EPR–SR, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–6689 *e-mail: kiefer.linda@epa.gov.*

SUPPLEMENTARY INFORMATION:

In the ''Rules and Regulations'' Section of today's **Federal Register**, we are publishing a direct final Notice of Partial Deletion for Operable Unit 8 (OU8) of the California Gulch Superfund Site without prior Notice of Intent for Partial Deletion because EPA views this as a noncontroversial revision and anticipates no adverse comment. We have explained our reasons for this partial deletion in the preamble to the direct final Notice of Partial Deletion, and those reasons are incorporated herein. If we receive no adverse comment(s) on this partial deletion action, we will not take further action on this Notice of Intent for Partial Deletion. If we receive adverse comment(s), we will withdraw the direct final Notice of Partial Deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final Notice of Partial Deletion based on this Notice of Intent for Partial Deletion. We will not institute a second comment period on this Notice of Intent for Partial Deletion. Any parties interested in commenting must do so at this time.

For additional information, *see* the direct final Notice of Partial Deletion which is located in the Rules section of this **Federal Register.**

List of Subjects in 40 CFR Part 300

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

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

Dated: October 22, 2009.

Carol Rushin,

Acting Regional Administrator, Region 8.

[FR Doc. E9–26956 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

COUNCIL ON ENVIRONMENTAL QUALITY

40 CFR Part 1515

RIN 0331–ZA01

Revision of Freedom of Information Act Regulations

AGENCY: Council on Environmental Quality.

ACTION: Notice of proposed rulemaking and opportunity for comment.

SUMMARY: The Council on Environmental Quality (CEQ) is proposing to amend its Freedom of Information Act (FOIA) regulations to reflect its current policy and practice and to implement changes to the FOIA. These proposed regulations reaffirm CEQ's commitment to providing the fullest possible disclosure of records to the public. The proposal provides for an online FOIA Requester Service Center and Reading Room; electronic FOIA requests; access to records published or released under FOIA in electronic format, provided the record is readily reproducible in that form or format; designation of a Chief FOIA Officer and FOIA Public Liaison; referral of requests to appropriate Federal agencies or consultation with another agency, if appropriate; review of requests in order of receipt; multi-tracking of FOIA requests based on the amount of time and work involved in processing requests; revision of CEQ's initial determination period from 10 days to 20 days, beginning on the date CEQ receives a written request; assignment of individualized tracking numbers for certain requests; tolling of the time limit CEQ has to act on a request; expedited processing of FOIA requests upon a showing of compelling need; CEQ consultations with a requester to determine if a FOIA request may be modified to allow for a timely response, or to arrange an alternative timeframe for a response; informing the requester of the volume of requested material withheld and the extent of deletions in records released in response to a FOIA request; reduction in time for appeal from 45 to 30 days of denial of a request; extension of the time limit to respond to a request in ''unusual circumstances''; and aggregation of clearly related requests by a single requester or group of requesters. Further, CEQ's fee structure is revised to include a method for computing fees based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from $0.10 to $0.15 per page, and a provision for waiving fees. Additional

administrative changes including reorganizing, renumbering, and renaming of the FOIA subsections and updating addresses and telephone numbers are also proposed.

DATES: Comments due on or before December 14, 2009.

ADDRESSES: All comments concerning the proposed rule must be submitted in either electronic or written form. Electronic mail comments should be sent to *efoia@ceq.eop.gov* and should include in the body of the e-mail message the commenter's full name and postal service address. Written comments should be addressed and mailed to Edward A. Boling, Chief FOIA Officer, Council on Environmental Quality, 722 Jackson Place, NW., Washington, DC 20503. Faxed comments should be sent to (202) 456–0753. Copies of all communications received will be available for public inspection and copying at the address above.

FOR FURTHER INFORMATION CONTACT: Elizabeth Moss, FOIA Coordinator, 722 Jackson Place, NW., Washington, DC 20503 or (202) 456–6550.

SUPPLEMENTARY INFORMATION: CEQ coordinates Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. CEQ was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* (NEPA) and additional responsibilities were provided by the Environmental Quality Improvement Act of 1970, 42 U.S.C. 4372 *et seq.* CEQ's current FOIA regulations are published at 40 CFR Part 1515 and are available on the CEQ's Web site at: *http://www.whitehouse.gov/administration/eop/ceq/foia.* Promulgated in 1977, 42 FR 65158 (Dec. 30, 1977), they have not been revised since to reflect current law or CEQ's policy and practice of conducting its activities in an open manner and providing the public with accurate and timely information about its activities. Amendments to the FOIA, including the ''Openness Promotes Effectiveness in our National Government Act of 2007'' (OPEN Government Act of 2007), Public Law 110–175, 121 Stat. 2524 (Dec. 31, 2007) and the ''Electronic Freedom of Information Act Amendments of 1996'' (1996 Act), Public Law 104–231, 110 Stat. 3048 (Oct. 2, 1996), require changes in CEQ FOIA practices to promote openness and transparency in government, provide for public access to information in an electronic format and ensure a prompt and effective response to the public's requests for information. In addition, the Freedom of Information Reform Act of 1986 (1986 Act), Public Law 99–570, 100 Stat. 3207 (1986), the DOJ's ''New FOIA Fee Waiver Policy Guidance'' (April 2, 1987) and the OMB's Uniform FOIA Fee Schedule and Guidelines, 52 FR 10012, March 27, 1987, established pursuant to the FOIA, require amendments to the FOIA fee provisions, including a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search and a provision for waiving fees. Finally, the Presidential Memorandum of January 21, 2009, ''Transparency and Openness,'' 74 FR 4685, and the Attorney General's March 19, 2009 FOIA policy guidance have advised Federal agencies to apply a presumption of disclosure in FOIA decision-making. The Attorney General's guidance further advises that agencies should release information to the fullest extent of the law, including information that may be legally withheld, provided there is no foreseeable harm to an interest protected by an exemption or the disclosure is not prohibited by law.

Consistent with these laws and guidance, CEQ undertook a comprehensive review of its FOIA regulations and, as a result proposes to revise its regulations to more clearly reflect current law and CEQ's current organizational structure, record system configuration and FOIA policy and practice and to eliminate outdated regulatory provisions. CEQ has modeled many of the provisions in today's rules on similar regulations previously adopted by other Federal agencies. Thus, many are identical to or closely resemble the requirements adopted by other Federal agencies, and as such represent regulatory ''best practices'' concerning FOIA procedures. The fee provisions reflect OMB's FOIA fee provisions. Additional provisions reorganize and renumber current FOIA regulations to reflect and implement the FOIA amendments referenced above.

CEQ's policy of disclosure follows the Presidential Memorandum and the Attorney General's guidance. Congress established CEQ to advise the President on matters of environmental policy. Therefore, members of the public should be advised that communications between CEQ and the President (and their staffs) may be confidential and thus may not be released if they fall within a FOIA exemption. However, based on the recommendation of the CEQ FOIA Officer or Appeals Officer, CEQ considers the release of an entire record, even if it comes within an exemption or contains policy advice, if its disclosure would not impair Executive Branch policymaking processes or CEQ's participation in decision-making. CEQ requests comments on the following changes in particular.

Section-by-Section Analysis

Section 1515.1. The FOIA, 5 U.S.C. 552, allows the public access to Federal agency records except those that are protected from release by nine specified exemptions. Language is added to the end of this section advising requesters that the regulations should be read together with the FOIA.

Sections 1515.2(b) and 1515.2(c). Section 1515.2(b) and Section 1515.2(c) are deleted in their entirety. Information about CEQ's purpose and functions is available online at *http://www.whitehouse.gov/administration/eop/ceq.* In 1995 Congress passed the Federal Reports Elimination and Sunset Act (Pub. L. 104–66) aimed at reducing paperwork in government, in part through the elimination of a list of reports identified in House Document No. 103–7. CEQ's Environmental Quality Report was listed on page 41. In addition, CEQ no longer maintains the ''Quarterly Reports'' referred to in Section 1515.2(c).

Sections 1515.3(a) and (c). These sections have been revised to reflect the current organizational structure of CEQ. Although the National Environmental Policy Act creates CEQ to have three members appointed by the President and confirmed by the Senate (42 U.S.C. 4342), in accordance with CEQ annual appropriations, the Council consists of one member.

Section 1515.3(e). This section has been deleted to reflect CEQ's current organizational structure. CEQ currently has an Associate Director for Communications but does not have a ''Public Affairs'' office.

Section 1515.3(f). The hours of operation and CEQ telephone number and zip code have been updated in this section.

Section 1515.4(a). The OPEN Government Act of 2007, amending 5 U.S.C. 552(j), requires agencies to designate a Chief FOIA Officer who is responsible for the efficient and appropriate compliance with and implementation of the FOIA. At CEQ, this official may also serve as the FOIA Appeals Officer and, along with the FOIA Public Liaison designated in Subsection 1515.3(d), is designated to provide a clear point of contact for the public in dealing with the CEQ on FOIA matters. Thus, a new Section 1515.4(a) implements these laws and incorporates

the information described in the current Section 1515.5(a).

Section 1515.4(b). The OPEN Government Act of 2007, amending 5 U.S.C. 552(k)(6), requires agencies to designate a FOIA Public Liaison who reports to the Chief FOIA Officer and whose role is to provide information to the public regarding the status of its FOIA requests and to receive ''concerns about the service a requester has received from the [FOIA Requester Service] Center.'' The OPEN Government Act of 2007, at 5 U.S.C. 552(l), further directs the Public Liaison to ''assist, as appropriate, in reducing delays, increasing transparency and understanding of the status of requests, and resolving disputes.'' At CEQ, the FOIA Public Liaison is the FOIA Officer responsible for reviewing and making the initial determination on a FOIA request. Thus, a new Section 1515.4(b) is added to implement these laws and CEQ current practice.

Section 1515.5(a). The language in this section has been deleted, and the information concerning CEQ's ''Chief FOIA Officer'' and ''Appeals Officer'' has been moved to a new Section 1515.4. In addition, this section has been renamed ''Availability of Records.'' Pursuant to Section 2(c)(i) of E.O. 13392, CEQ maintains an online FOIA Requester Service Center ''which shall serve as the first place that a FOIA requester can contact to seek information concerning the status of the person's FOIA request and appropriate information about the agency's FOIA response.'' The 1996 FOIA Amendments, amending 5 U.S.C. 552(a)(2), require agencies to make records that may be the subject of future requests, including computer telecommunications, created on or after November 1, 1996, available by electronic means. Accordingly, language is added to this section to implement these laws.

Section 1515.5(b)(1). To reflect current CEQ practice, the language in this section is deleted in its entirety and replaced with the process the public follows when requesting information from CEQ. Like the original section, the new Section 1515.5(b)(1) requires all requests to be in writing and provides updated address and telephone contact information. It has also been revised to add language notifying requesters that they may submit FOIA requests via e-mail or facsimile.

Section 1515.5(b)(2). The first two sentences of this section are deleted in their entirety, and the information contained in these deletions is reorganized and stated in Section 1515.5(b)(1). The language in current Section 1515.5(b)(3) is moved to this section. Additionally, the 1996 Amendments, amending 5 U.S.C. 552(a)(3)(B), require agencies to provide records in the form or format requested ''if the record is readily reproducible by the agency in that form or format.'' Accordingly, language is added to this section notifying requesters to specify the form or format in which they wish to receive their response; otherwise CEQ will produce the request in the form or format most accessible to CEQ. Requesters are advised that FOIA requests themselves are part of CEQ's agency records subject to public release under FOIA.

Section 1515.5(b)(3). The language in this section has been reorganized and incorporated into Section 1515.5(b)(2). In addition, the OPEN Government Act of 2007, amending 5 U.S.C. 552(a)(6)(B)(iii)(III), grants agencies the authority to consult with another agency with a substantial interest in the determination of the request. The 1996 Amendments, amending 5 U.S.C. 552(a)(6)(D)(i) and (ii), allow agencies to provide for multitrack processing of requests for records based on the amount of time and/or work involved in processing of requests and to allow a FOIA requester whose request does not qualify for the fastest multitrack processing an opportunity to limit the scope of the request in order to qualify for faster processing. Thus language is added to this section to implement these amendments.

Section 1515.5(b)(5). The OPEN Government Act of 2007, amending 5 U.S.C. 552(a)(6)(A), provides that the statutory time period for determination commences ''on the date on which the request is first received by the appropriate component of the agency, but in any event not later than ten days after the request is first received by any component of the agency that is designated in the agency's regulations under this section to receive requests.'' The language in the current Section 1515.5(b)(5) is deleted to reflect current law. In addition, the new Section 1515.6 contains new language notifying requesters that the determination period begins on the date CEQ receives the request.

Section 1515.6(a). This section renumbers and revises current Section 1515.5(c)(1). The 1996 Act, amending 5 U.S.C. 552(a)(6)(A)(i), lengthened the time within which agencies must respond to FOIA requests from 10 to 20 working days. Moreover, the OPEN Government Act of 2007 added Sections 552(a)(6)(A)(ii)(I) and (II) to the FOIA which provide authority for agencies to toll the 20 day determination period. Specifically, an agency ''may make one request to the requester for information and toll'' the statutory time period ''while it is awaiting such information that it has reasonably requested from the requester.'' It may also toll the time period ''if necessary to clarify with the requester issues regarding fee assessment.'' There is no limit given for the number of times the agency may go back to a requester to clarify issues regarding fee assessments, which may need to be done in stages as the records are being located and processed. In both situations, the requester's response to the agency's request ''ends the tolling period.'' Accordingly, the time limit for determination is revised and language is added to this subsection to implement these laws.

Section 1515.6(b). The OPEN Government Act of 2007, which added 5 U.S.C. 552(a)(7), requires agencies to assign a tracking number for each request that will require more than 10 days to process and provide requesters with information regarding the status of their request. It further requires agencies to establish a phone number or an internet site to enable requesters to inquire about the status of their request. Accordingly, this section has been added to implement these requirements.

Section 1515.6(c). This section renumbers current Section 1515.5(c)(2).

Section 1515.6(d). This section renumbers and revises current Section 1515.5(c)(4). The 1996 Act and the OPEN Government Act of 2007, amending 5 U.S.C. 552(a)(2), require agencies in the event of a denial, in whole or in part, to indicate the extent of any deletion made in released records and publicly available records and to inform the requester of the estimated volume of material withheld. Thus language is added to this section to implement these laws.

Section 1515.7. The 1996 Act, amending 5 U.S.C. 552(a)(6)(E)(i), directs agencies to provide for expedited processing of FOIA requests in cases of ''compelling need'' and in other cases, if any, determined by the agency. Thus this new subsection 1515.7 is added which tracks the language of the FOIA amendments. The FOIA also sets out procedures for handling requests for expedited processing and for appeals which are followed and incorporated in this section.

Section 1515.8(a). This section renumbers and revises current § 1515.5(d)(1) and explains the appeals process to a FOIA request determination. In order to streamline CEQ's FOIA process and provide prompt responses, the time period for

filing an appeal is reduced from 45 to 30 days.

Section 1515.8(b). This section is added to advise requesters that they may file written appeals via e-mail or facsimile.

Section 1515.8(d). This section renumbers and revises current § 1515.5(d)(4). Language is added to notify requesters that the 20 day appeal determination period does not include Saturdays, Sundays, and Federal holidays.

Section 1515.9. This section renumbers and revises current Section 1515.5(e). The FOIA at 5 U.S.C. 552(a)(6)(B) and Section 1515.5(e) of CEQ's current regulations permit CEQ, upon written notice to the requester, to extend the time limit for acting on a request or appeal if ''unusual circumstances'' exist. The 1996 Act, amending 5 U.S.C. 552(a)(6)(B)(ii), expanded this authority to permit agencies to further extend the response time by notifying the requesters and providing them with an opportunity to either limit the scope of their request so that no extension is needed, or to arrange with the agency an alternative time frame for processing the request. Accordingly, a new § 1515.9(b) is added to implement this law, and the definition of ''unusual circumstances'' currently at § 1515.5(e)(i), (ii) and (iii) is renumbered and restated in a new § 1515.9(c).

Section 1515.10(a). The 1996 Act, amending 5 U.S.C. 522(a)(3)(C) and (D) requires agencies to provide requested records in any form or format requested, if the record is readily reproducible by the agency in that form or format. Agencies must make reasonable efforts to maintain their records in forms or formats that are reproducible electronically and to search for requested records in electronic form or format, except when such efforts would significantly interfere with the operation of the agency's automated information system. Accordingly, language is added to this section to implement this law. Language is also added to this section advising requesters that CEQ will make requested materials available at its online FOIA Center.

Section 1515.10(b). The OPEN Government Act of 2007, amending 5 U.S.C. 522(b), amends the current FOIA provision listing exemptions and generally requiring agencies to indicate directly ''on the released portion of the record'' the amount of information deleted, by adding the requirement that agencies also indicate ''the exemption under which the deletion is made.'' Accordingly, this section is added as § 1515.10(b) which follows the language of this law.

Section 1515.10(c). In a Memorandum to Heads of Executive Departments and Agencies dated January 21, 2009, the President directed Federal agencies to implement the FOIA with a presumption of openness and in favor of disclosure. CEQ is committed to operating transparently and subject to public scrutiny and accountability. Accordingly, this section is deleted. CEQ's relationship with the President is referenced in the Preamble of the Notice of Proposed Rulemaking.

Section 1515.11. The current § 1515.15 regarding ''Costs'' is deleted in its entirety, and is replaced with updated fee structure and policy, §§ 1515.11 through 1515.15, to be consistent with ''The Freedom of Information Reform Act of 1986,'' Public Law 99–570, 1801–1804, 100 Stat. 3207, 3207–48 (1986), which established the current FOIA fee structure and waiver standard; and subsequent policy guidance and guidelines issued by the U.S. Department of Justice, ''New FOIA Fee Waiver Policy Guidance'' (4–2–87), and the Office of Management and Budget, ''Uniform Freedom of Information Act Fee Schedule and Guidelines.'' 52 FR 1007, March 27, 1987. CEQ's fee structure includes a method for computing fees that is based upon the classification of the requester and the base pay of the employee making the search, an increase of copying costs from $0.10 to $0.15 per page, and provides for waiver of fees.

Section 1515.16. This new proposed section advises requesters that CEQ's FOIA regulations do not ''entitle any person, as of right, to any service or to the disclosure of any records to which such person is not entitled under the FOIA.''

Regulatory Analysis and Notices

Administrative Procedure Act

This proposed rulemaking is in compliance with the Administrative Procedure Act (5 U.S.C. 553) and allows for a 30-day comment period. Interested persons are invited to submit written comments to CEQ on this proposed regulation, to be received within 30 days of publication of this Notice. CEQ will review all comments received and consider any modifications to this proposal which appear warranted.

Regulatory Flexibility Act

For purposes of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6), the proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. The proposed rule addresses only the procedures to be followed: (1) To request CEQ records; or (2) in the production or disclosure of CEQ materials and information in litigation where CEQ is not a party. Under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for certain categories of requesters. CEQ's proposed fee structure is in accordance with DOJ guidelines and based upon OMB fee schedules which calculate costs based upon the category of requester and kind of employee duplicating the records. Thus, fees assessed by CEQ are nominal and will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), the proposed rule would not significantly or uniquely affect small governments and would not result in increased expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (as adjusted for inflation).

Executive Order 12866

In issuing this proposed regulation, CEQ has adhered to the regulatory philosophy and the applicable principles of regulation as set forth in Section 1 of Executive Order 12866, Regulatory Planning and Review, 58 FR 51735. This proposed rule has not been reviewed by the Office of Management and Budget under that Executive Order since it is not a significant regulatory action within the meaning of the Executive Order.

Executive Order 12988

CEQ has reviewed this proposed regulation in light of Section 3 of Executive Order 12988, Civil Justice Reform, and certifies that it meets the applicable standards provided therein.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this proposed regulation does not impose any reporting or recordkeeping requirements.

National Environmental Policy Act (NEPA)

The National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.,* and the CEQ regulations which implement the NEPA, 40 CFR 1500–1508, impose requirements for considering the environmental impacts

of proposed agency decisions and actions. They provide for each agency to develop a list of categories of actions called categorical exclusions (CEs) that are determined through agency experience to typically have no significant environmental impact and thus may generally be excluded from detailed analysis and documentation. It further directs agencies to prepare an environmental impact statement (EIS) for ''major Federal actions significantly affecting the quality of the human environment.'' If an action may have a significant impact and the agency has not decided to prepare an EIS, the agency must prepare an environmental assessment (EA). If, as a result of this assessment, the agency makes a Finding of No Significant Impact (FONSI), no further action is necessary. If it will have a significant effect, then the agency uses the EA to develop an EIS.

Overview: CEQ's NEPA regulations do not have a CE for either the dissemination of information under the FOIA or the preparation, revision, and adoption of regulations, directives, and other guidance documents. Thus, CEQ includes in this Notice an EA to determine whether these proposed revisions to CEQ's FOIA regulations may or may not have a significant impact on the human environment. Because as set forth below, the proposed rules pertain solely to procedures regarding the dissemination of information and will have not only a minimal impact on CEQ resources, including paper consumption, but will conserve resources and improve the FOIA process, CEQ proposes a finding that the proposed regulations will have no significant impact on the human environment and therefore, an EIS is not required.

Purpose and Need: As set forth above in the Supplemental Information section, CEQ's FOIA regulations were adopted in 1977 and have not been updated since to reflect FOIA amendments and CEQ policy and practice. As such, the current regulations fail to reflect current FOIA requirements including timelines for CEQ response to requests, provision of and access to online resources, increased use of technology to reduce paperwork including the use of electronic formats, practices with respect to aggregating requests, requests for expedited processing, and implementation of multi-track processing. CEQ's FOIA Improvement Plan, dated September 6, 2006, identified the need to amend these regulations, but this action has been delayed by staffing constraints. CEQ is undertaking revisions at this time in response to the President's Memorandum, amendments to the FOIA, and the Department of Justice Attorney General guidelines referenced above in the **SUPPLEMENTARY INFORMATION** section.

Proposed Action and Alternatives: A summary of the proposed action is set forth above in the **SUMMARY** section. Under a ''no action'' alternative, CEQ would continue to operate under its 1977 regulations and the current law, addressing inconsistencies between the two on a case-by-case basis. CEQ has decided that this approach is undesirable because it is confusing to the public and requires CEQ staff to address inconsistencies between CEQ procedures and the law that are obviated by updating CEQ's regulations.

CEQ considered an alternative of a more expansive regulation, which would include statements of policy in this **Federal Register** notice and details of CEQ's internal organization under its FOIA Improvement Plan described in its FOIA Annual Reports.

The CEQ preferred alternative is as proposed in this **Federal Register** Notice which reflects CEQ's current practice and procedure at a level of detail that is appropriate for agency FOIA regulations. CEQ has an online reading room which it continues to update and by which it provides the public information concerning its operations thereby eliminating paperwork and streamlining its FOIA operations. CEQ has designated FOIA officials and staff to improve processing of and response to FOIA requests, which allows CEQ to deliver the FOIA product in a manner which is consistent with law and regulation and meets the requirements and expectations of the public. For example, the final regulations would ensure the public has the opportunity to obtain information in the format of its choice (including electronic formats) when it is feasible for CEQ to produce the information in the requested manner.

Environmental Effects of Alternatives: CEQ's FOIA implementation affects the environment primarily through use of paper and energy for copying and distribution. CEQ's use of paper and energy has remained within the range typical of the operations of a small office. Prior to the implementation of its online reading room, CEQ responded to requests by providing paper copies of documents requested. This output has ranged from approximately 7,000 to 75,000 pages of records for one request. CEQ has also responded to requests for certain e-mails by printing them out on recycled paper, scanning them into portable document format (.pdf), and forwarding them to the requester. By adopting the proposed regulations, CEQ is codifying its current practice of increasing the use of electronic formats in response to requests, which has reduced expenditure of CEQ resources, including employee time and paperwork. To place this paper use in context, the typical office worker uses about 10,000 sheets of copier paper per year. DOE, Lawrence Berkeley Laboratory, University of California, Environmental Energy Technologies Division, *Facts about U.S. Paper Use* (*http://eetd.lbl.gov/paper/ideas/html/uspaperuse.htm*).

Decision: Based on the analysis above, CEQ proposes to find that implementation of the proposed regulations in this notice would reduce the paperwork and resources CEQ expends in response to FOIA requests, streamline CEQ's FOIA procedures, and make CEQ more accessible and responsive to the public. Thus, there would be no significant impacts associated with implementation of the proposed action. CEQ makes this Finding of No Significant Impact and no further environmental assessment is required. Public comment is invited on this environmental assessment.

List of Agencies and Persons Consulted: Department of Justice, Office of Information and Privacy and the Office of the Federal Environmental Executive have reviewed and commented on this EA and Notice of Proposed Rulemaking.

List of Subjects in 40 CFR Part 1515

Administrative practice and procedures, Conflict of interests, Freedom of information, Courts, Government employees, Records, Subpoenas, Testimony.

Accordingly, for the reasons set forth in the preamble, the Council on Environmental Quality proposes to revise 40 CFR 1515 to read as follows:

PART 1515—FREEDOM OF INFORMATION ACT PROCEDURES

Sec.

Purpose

1515.1 FOIA procedures.

Organization of CEQ

1515.2 About the Council on Environmental Quality (CEQ).
1515.3 CEQ organization.
1515.4 CEQ FOIA Officials.

Procedures for Requesting Records

1515.5 Making a Freedom of Information Act request.
1515.6 CEQ's response to a request.
1515.7 Expedited processing.
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Availability of Information

1515.10 Obtaining available information.

Costs

1515.11 Definitions.
1515.12 Fees in general.
1515.13 Fees for categories of requesters.
1515.14 Other charges.
1515.15 Payment and waiver.
1515.16 Other rights and services.
1515.17–1515.19 [Reserved]

Authority: 5 U.S.C. 552, as amended by Public Law 93–502, Public Law 99–570, Public Law 104–231, Public Law 110–175; E.O. 13392; Pres. Mem. 74 FR 4685. Source: 42 FR 65158, Dec. 30, 1977, unless otherwise noted.

Purpose

§ 1515.1 FOIA procedures.

The Freedom of Information Act (5 U.S.C. 552), as amended, commonly known as FOIA, is a Federal law that creates a procedure for any person to request official documents and other records from United States Government agencies. The law requires every Federal agency to make available to the public the material requested, unless the material falls under one of the limited exemptions stated in Section 552(b) of the Act. These procedures explain how the Council on Environmental Quality (CEQ)—one of several agencies in the Executive Office of the President—will carry out the FOIA. They are written from the standpoint of an FOIA requester and should be read together with the FOIA, which provides additional information about access to records maintained by CEQ. This information is furnished for the guidance of the public and in compliance with the requirements of Section 552 of title 5, United States Code, as amended.

Organization of CEQ

§ 1515.2 About the Council on Environmental Quality (CEQ).

The Council on Environmental Quality (''CEQ'' or ''the Council'') was created by the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 through 4347). The Council's authority is primarily derived from that Act, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371–4374), Reorganization Plan No. 1 of 1977 (July 15, 1977), and Executive Order 11514, ''Protection and Enhancement of Environmental Quality,'' March 5, 1970, as amended by Executive Order 11991, May 24, 1977.

§ 1515.3 CEQ organization.

(a) The Council is made up of a Chair appointed by the President and subject to approval by the Senate who serves in a full-time capacity. Congress has allowed CEQ to consist of a Council of one member who serves as Chairman or Chair.

(b) The National Environmental Policy Act and the Environmental Quality Improvement Act give the Council the authority to hire any officers and staff that may be necessary to carry out responsibilities and functions specified in these two Acts. Also, the use of consultants and experts is permitted.

(c) In addition to the Chair, the Council has program and legal staff.

(d) The Council has no field or regional offices.

(e) The Council is located at 722 Jackson Place, NW., Washington, DC 20503. Office hours are 9 a.m.–5:30 p.m., Monday through Friday, except Federal holidays. To meet with any of the staff, please write or phone ahead for an appointment. The main number is 202–456–6224.

§ 1515.4 CEQ FOIA Officials.

(a) The Chair shall appoint a Chief Freedom of Information Act Officer (Chief FOIA Officer) who is responsible for overseeing the Council's administration of the Freedom of Information Act and for receiving, routing and overseeing the processing of all Freedom of Information requests as set forth in these regulations. The Chair shall appoint an Appeals Officer, who is responsible for processing and acting upon any appeals and may designate one or more CEQ officials, as appropriate, as FOIA Officers authorized to oversee and process FOIA requests. The Chief FOIA Officer may serve as the Appeals Officer.

(b) The Chief FOIA officer shall designate a FOIA Public Liaison who is the supervisory official to whom a FOIA requester can raise concerns about the service the FOIA requester has received from the CEQ FOIA Center, described in section 1515.5(a), following an initial response from the staff of the CEQ FOIA Center staff. The FOIA Public Liaison shall assist, as appropriate, in reducing delays and increasing understanding of the status of requests. The Chief FOIA officer shall also designate a CEQ FOIA Officer responsible for overseeing CEQ's day-to-day administration of the FOIA and for receiving, routing, and overseeing the processing of all FOIA requests.

Procedures for Requesting Records

§ 1515.5 Making a Freedom of Information Act request.

(a) *Availability of records.* The Council maintains a World Wide Web site, *http:/www.whitehouse.gov/administration/eop/ceq*, and an online Freedom of Information Act Requester Service Center (''Center''), *http://www.whitehouse.gov/administration/eop/ceq/foia*. From the Center, a requester can find contact information regarding the CEQ's FOIA Public Liaison, as defined in section 1515.4(b), and access CEQ's Online Reading Room where CEQ makes available records pertaining to matters within the scope of 5 U.S.C. 552(a)(2), as amended, and environmental issues and other documents that, because of the nature of their subject matter, are likely to be the subject of FOIA requests. To save both time and money, CEQ strongly urges requesters to review documents currently available from the Center's Online Reading Room before submitting a request.

(b) *Requesting information from the Council.* (1) Requesters must make a Freedom of Information Act request in writing. For quickest possible handling, it should be sent via e-mail to: *efoia@ceq.eop.gov* and must include in the subject line of the e-mail message: ''Freedom of Information Act Request.'' Written requests may also be faxed to (202) 456–0753 or addressed and mailed to: Council on Environmental Quality, Executive Office of the President, 722 Jackson Place, NW., Washington, DC 20503. Requesters should mark both the request letter and the envelope ''Freedom of Information Act Request'' and include their name, address, and sufficient contact information to allow follow up regarding the scope and status of your request.

(2) The request should identify or reasonably describe the desired record. It should be as specific as possible, so that the item can be readily found. Blanket requests, such as requests for ''all materials relating to'' a specified subject are not recommended. Requesters should specify the preferred form or format (including electronic format) for the response. CEQ will accommodate such requests, if the record is readily reproducible in that form or format. Please be aware that FOIA requests and responses may themselves be made available for public inspection.

(3) The CEQ FOIA Officer is responsible for acting on all initial requests; however, he or she may consult and refer, pursuant to section 552(a)(6)(B)(iii)(III) of the FOIA, with

another agency if he or she determines that that agency is better able to act on the request. Whenever the CEQ FOIA Officer refers all or any part of the responsibility for responding to a request to another agency, he or she will notify the requester of the referral, the name of the agency and agency official to whom it has been referred, and which portion of the request has been referred. Unless a request is deemed ''expedited'' as set forth in section 1515.7 below, the CEQ FOIA Officer will respond to requests in order of receipt. CEQ may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of time and work needed to process the request. CEQ may provide requesters on a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(4) The Council will make a reasonable effort to assist with defining the request to eliminate extraneous and unwanted materials and to keep search and copying fees to a minimum. If budgetary constraints exist, the requester should indicate the maximum fee he or she is prepared to pay to acquire the information. (*See also* § 1515.11)

(5) The Freedom of Information Act does not require a government agency to create or research information; rather, it only requires that existing records be made available to the public.

§ 1515.6 CEQ's response to a request.

(a) Upon receipt of any written request for information or records, under the Act, the CEQ FOIA Officer or his or her designee will decide how to respond to—or ''make an initial determination on''—the request within 20 days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the request. The CEQ FOIA Officer will provide written notification of the determination, including, if applicable, notification that the request has been referred to another agency for consultation as set forth above in Section 1515.5(b)(3). CEQ may make one request to the requester for information and toll the 20-day period while it is awaiting such information that it has reasonably requested from the requester. It may also toll the 20-day period if necessary to clarify with the requester issues regarding fee assessment. In either case, CEQ's receipt of the requester's response to its request for information or clarification ends the tolling period.

(b) Requests received by the CEQ FOIA Officer or his or her designee will be assigned an individualized tracking number, if they will take more than 10 days to process. Requesters may call the FOIA Public Liaison at (202) 456–6224 and, using the tracking number, obtain information about the request, including the date on which CEQ originally received the request and an estimated date on which CEQ will complete action on the request.

(c) If it is appropriate to grant the request, a staff member will immediately collect the requested materials in order to accompany, wherever possible, the Freedom of Information Officer's letter conveying the decision.

(d) If a request is denied in part or in full, the letter conveying the decision will be signed by the CEQ FOIA Officer, and will include: The reasons for any denial, including any FOIA exemption(s) applied by the FOIA Officer in denying the request; an estimate of the volume of records or information withheld, in number of pages or in some other reasonable form of estimation. This estimate does not need to be provided if the volume is otherwise indicated through exemptions on records disclosed in part, or if providing an estimate would harm an interest protected by an applicable exemption; and the procedure for filing an appeal.

§ 1515.7 Expedited processing.

(a) Requests and appeals will be taken out of order and given expedited treatment whenever it is determined that they involve:

(1) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(2) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person primarily engaged in disseminating information.

(b) A request for expedited processing may be made at the time of the initial request for records or at any later time.

(c) A requester who seeks expedited processing must submit a written statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. For example, a requester within the category described in paragraph (a)(2) of this section, if not a full-time member of the news media, must establish that he or she is a person whose main professional activity or occupation is information dissemination, though it need not be his or her sole occupation. A requester within category (a)(2) of this section must also establish a particular urgency to inform the public about the government activity involved in the request, beyond the public's right to know about government activity generally. Formal certification may be waived as a matter of administrative discretion.

(d) Within 10 days of its receipt of a request for expedited processing, the CEQ FOIA Officer will decide whether to grant it and will notify the requester of the decision. If a request for expedited treatment is granted, the request will be given priority and will be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision will be acted on expeditiously.

§ 1515.8 Appeals.

(a) The requester may appeal an adverse determination, in any respect, to the CEQ FOIA Appeals Officer. Any appeal must be received by CEQ within 60 days of the date on the CEQ letter denying the request.

(b) Appeals must be in writing and may be sent via e-mail to: *efoia@ceq.eop.gov*. They may also be sent via facsimile to: (202) 456–0753 or via U.S. Mail addressed to: FOIA Appeals Officer, Council on Environmental Quality, Executive Office of the President, 722 Jackson Place, NW., Washington, DC 20503.

(c) The appeal letter should specify the records requested and ask the Appeals Officer to review the determination made by the Freedom of Information Officer. The letter should explain the basis for the appeal.

(d) The Appeals Officer will decide the appeal—or ''make a final determination''—within 20 working days (excepting Saturdays, Sundays and Federal holidays) from the date CEQ receives the appeal. The Appeals Officer (or designee) will send a letter to the requester conveying the decision as soon as it is made. If an appeal is denied, in part or in whole, the letter will also include the provisions for judicial review.

§ 1515.9 Extending CEQ's time to respond.

(a) In unusual circumstances as defined in paragraph (c) of this section, the time limits for responding to a request (§§ 1515.6(a) and 1515.8(d)) may be extended by the Council for not more than 10 working days. Extensions may be granted by the CEQ FOIA Officer in the case of initial requests and by the Appeals Officer in the case of any appeals. The extension period may be split between the initial request and the appeal but may not exceed 10 working days overall. Extensions will be

confirmed in writing and set forth the reasons for the extension and the date that the final determination is expected.

(b) With respect to a request for which a written notice under this section extends the time limits prescribed under section 1515.6(a), the CEQ FOIA Officer will notify the requester, if the request cannot be processed within the time limit specified in § 1515.6(a) and provide an opportunity to limit the scope of the request, so that it may be processed within that time limit or an opportunity to arrange an alternative time frame for processing the request or a modified request. A requester's refusal to reasonably modify the request or arrange such an alternative time frame will be considered as a factor in determining whether exceptional circumstances exist for purposes of 5 U.S.C. 552(a)(6)(C). When CEQ reasonably believes that a requester, or a group of requesters, has submitted a request constituting a single request that would otherwise satisfy the unusual circumstances specified under this section, CEQ may aggregate those requests for purposes of this paragraph. Multiple requests involving unrelated matters will not be aggregated.

(c) The term ''unusual circumstances'' means:

(1) The need to search for and collect the requested records from establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which will be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial subject-matter interest therein.

Availability of Information

§ 1515.10 Obtaining available information.

(a) When a request for information has been granted in whole or in part, CEQ will notify the requester in writing, inform the requester in the notice of any fee charged under § 1515.11 and will disclose records to the requester promptly on payment of any applicable fees. The requested material may be made available on CEQ's Online FOIA Center, *http://www.whitehouse.gov/administration/eop/ceq/foia*, and also in the form or format requested if the record is readily reproducible in that form or format with reasonable effort. When a form or format of the response is not requested, CEQ will respond in the form or format in which the document is most accessible to CEQ. ''Readily reproducible'' means, with respect to electronic format, that the requested record or records can be downloaded or transferred intact to a computer disk or other electronic medium using equipment currently in use by CEQ.

(b) Records disclosed in part will be marked or annotated to show information deleted, unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted will also be indicated in the record, if technically feasible.

Costs

§ 1515.11 Definitions.

For purposes of these regulations:

Commercial use request means a request from or on behalf of a person who seeks information for a use or purpose that furthers the requester's or other person's commercial, trade, or profit interests.

Direct costs means those costs incurred in searching for and duplicating (and, in the case of commercial use requests, reviewing) documents to respond to a FOIA request. Direct costs include, for example, salaries of employees who perform the work and costs of conducting large-scale computer searches.

Duplicate means to copy records to be released to the FOIA requester. Copies can take the form of paper, audio-visual materials, or electronic records, among others.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, that operates a program or programs of scholarly research.

Non-commercial scientific institution means an institution that is not operated on a commercial basis and that operates solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience.

Review means to examine a record to determine whether any portion of the record may be withheld and to process a record for disclosure, including by redacting it.

Search for means look for and retrieve records covered by a FOIA request, including by looking page-by-page or line-by-line to identify responsive material within individual records.

§ 1515.12 Fees in general.

CEQ shall charge fees that recoup the full allowable direct costs it incurs in responding to FOIA requests. CEQ may assess charges for time spent searching for records even if CEQ fails to locate the records or if the records are located and determined to be exempt from disclosure. In general, CEQ shall apply the following fee schedule, subject to §§ 1515.13 through 1515.15:

(a) *Manual searches.* Time devoted to manual searches shall be charged on the basis of the salary of the employee(s) conducting the search (basic hourly rate(s) of pay for the employee(s), plus 16 percent).

(b) *Electronic searches.* Fees shall reflect the direct cost of conducting the search. This will include the cost of operating the central processing unit for that portion of operating time that is directly attributable to searching for and printing records responsive to the FOIA request and operator/programmer salary attributable to the search.

(c) *Record reviews.* Time devoted to reviewing records shall be charged on the same basis as under paragraph (a) of this section, but shall only be applicable to the review of records located in response to commercial use requests.

(d) *Duplication.* Fees for copying paper records or for printing electronic records shall be assessed at a rate of $.15 per page. For other types of copies such as disks or audio visual tapes, CEQ shall charge the direct cost of producing the document(s). If total costs are expected to exceed $25, the FOIA Officer shall notify the requester, unless the requester has indicated in advance a willingness to pay fees as high as those anticipated. If a requester wishes to limit costs, the FOIA Officer shall provide the requester an opportunity to reformulate the request in order to reduce costs. If the requester reformulates a request, it shall be considered a new request and the 20-day period described in § 1515.6(a) shall be deemed to begin when the FOIA Officer receives the request.

(e)(1) *Advance payments required.* The FOIA Officer may require a requester to make an advance deposit of up to the amount of the entire anticipated fee before the FOIA Officer begins to process the request if:

(i) The FOIA Officer estimates that the fee will exceed $250; or

(ii) The requester has previously failed to pay a fee in a timely fashion.

(2) When the FOIA Officer requires a requester to make an advance payment, the 20-day period described in § 1515.6(a) shall begin when the FOIA Officer receives the payment.

(f) *No assessment of fee.* CEQ shall not charge a fee to any requester if:

(1) The cost of collecting the fee would be equal to or greater than the fee itself; or

(2) After the effective date of these regulations CEQ fails to comply with a time limit under the Freedom of Information Act for responding to the request for records where no unusual or exceptional circumstances apply.

§ 1515.13 Fees for categories of requesters.

CEQ shall assess fees for certain categories of requesters as follows:

(a) *Commercial use requesters.* In responding to commercial use requests, CEQ shall assess fees that recover the full direct costs of searching for, reviewing, and duplicating records.

(b) *Educational and non-commercial scientific institutions.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages. To qualify for inclusion in this fee category, a requester must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scholarly research, not an individual goal.

(c) *Representatives of the news media.* CEQ shall provide records to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(d) *All other requesters.* CEQ shall charge requesters who do not fall within paragraphs (a) through (c) of this section fees that recover the full direct cost of searching for and duplicating records, excluding charges for the first 100 pages of reproduction and the first two hours of search time.

§ 1515.14 Other charges.

CEQ may apply other charges, including the following:

(a) *Special charges.* CEQ shall recover the full cost of providing special services, such as sending records by express mail, to the extent that CEQ elects to provide them.

(b) *Interest charges.* CEQ may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the FOIA Officer sent the billing. Interest shall be charged at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of billing.

(c) *Aggregating requests.* When the FOIA Officer reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of avoiding fees, the FOIA Officer shall aggregate those requests and charge accordingly.

§ 1515.15 Payment and waiver.

(a) *Remittances.* Payment shall be made in the form of check or money order made payable to the Treasury of the United States. At the time the FOIA Officer notifies a requester of the applicable fees, the Officer shall inform the requester of where to send the payment.

(b) *Waiver of fees.* CEQ may waive all or part of any fee provided for in §§ 1515.12 and 1515.13 when the FOIA Officer deems that disclosure of the information is in the general public's interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. In determining whether a fee should be waived, the FOIA Officer may consider whether:

(1) The subject matter specifically concerns identifiable operations or activities of the government;

(2) The information is already in the public domain;

(3) Disclosure of the information would contribute to the understanding of the public-at-large as opposed to a narrow segment of the population;

(4) Disclosure of the information would significantly enhance the public's understanding of the subject matter;

(5) Disclosure of the information would further a commercial interest of the requester; and

(6) The public's interest is greater than any commercial interest of the requester.

§ 1515.16 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the FOIA.

§§ 1515.16–1515.19 [Reserved]

Dated: October 23, 2009.

Nancy H. Sutley,

Chair, Council on Environmental Quality.

[FR Doc. E9–27234 Filed 11–12–09; 8:45 am]

BILLING CODE 3125–W9–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 3 and 52

[FAR Case 2008–025; Docket 2009–0039, Sequence 1]

RIN 9000–AL46

Federal Acquisition Regulation; FAR Case 2008–025, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to address personal conflicts of interest by employees of Government contractors as required by section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before January 12, 2010 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2008–025 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–025'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–025. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–025'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, *Attn:* Hada Flowers.

Instructions: Please submit comments only and cite FAR case 2008–025 in all correspondence related to this case. All comments received will be posted without change to *http://*

www.regulations.gov, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Neurauter, Procurement Analyst, at (202) 219–0310 for clarification of content. For information pertaining to status or publication schedules, contract the Regulatory Secretariat division at (202) 501–4755. Please cite FAR Case 2008–025.

SUPPLEMENTARY INFORMATION:

A. Background

The Duncan Hunter National Defense Authorization Act (NDAA) for Fiscal Year 2009, section 841(a), requires that the Office of Federal Procurement Policy (OFPP) develop policy to prevent personal conflicts of interest by contractor employees performing acquisition functions closely associated with inherently governmental functions for or on behalf of a Federal agency or department. The NDAA also requires OFPP to develop a personal conflicts-of-interest clause(s) for inclusion in solicitations, contracts, task orders, and delivery orders. To address the requirements of section 841(a) in the most effective manner possible, OFPP collaborated with the Councils on this case to develop regulatory guidance, including a new subpart under FAR part 3, and a new clause for contracting officers to use in contracts to prevent personal conflicts of interest for contractor employees performing acquisition functions for or on behalf of a Federal agency or department.

OFPP and the Councils are proposing a policy that will require each contractor that has employees performing acquisition functions closely associated with inherently governmental functions to identify and prevent personal conflicts of interest for such employees. In addition, such contractors will be required to prohibit covered employees with access to non-public Government information from using it for personal gain. The proposed rule also makes contractors responsible for (1) Having procedures to screen for potential conflicts of interest, (2) informing covered employees of their obligations with regard to these policies, (3) maintaining effective oversight to verify compliance, (4) reporting any personal conflict-of-interest violations to the contracting officer, and (5) taking appropriate disciplinary action with employees who fail to comply with these policies.

This proposed rule does not address the issue of personal conflicts of interest by contractor employees with respect to other functions, or the issue of additional coverage addressing organizational conflicts of interest. Those issues, which were the subject of an Advance Notice of Proposed Rulemaking (see **Federal Register** at 73 FR 15961 on March 26, 2008, and **Federal Register** at 73 FR 34600 on June 17, 2008), will be addressed consistent with the requirements of section 841, which requires review by the Administrator for Federal Procurement Policy, in consultation with the Director of the Office of Government Ethics, to determine whether further revision to the FAR, and action by the FAR Council, is necessary.

1. Sources Reviewed. In developing the proposed rule in this case, the Councils reviewed the Government Accountability Office (GAO) Report to the Committee on Armed Services, U.S. Senate, GAO–08–169, Defense Contracting: Additional Personal Conflict of Interest Safeguards Needed for Certain DoD Contractor Employees, dated March 2008, and internal policies, procedures, and regulations of various Federal agencies.

2. Definitions (FAR 3.1101) and 52.203–16.

a. Personal conflict of interest. The legislation requires development of a definition for ''personal conflict of interest''. The Councils reviewed various documents on personal conflicts of interest in developing the proposed definition, including identification of sources of personal conflicts of interest and examples of financial interests.

b. Acquisition function closely associated with inherently governmental functions. The statute requires that contractors, whose employees perform acquisition functions closely associated with inherently governmental functions, identify and prevent personal conflicts of interest for employees of the contractor who are performing such functions. The Councils developed the definition of ''acquisition function closely associated with inherently governmental functions'' by reviewing FAR subpart 7.5, Inherently Governmental Functions, especially 7.503(d), and identifying those functions that are acquisition related. Supporting or providing advice or recommendations with regard to any such acquisition function is defined to be an acquisition function closely associated with inherently governmental functions. Additional changes may be made to this guidance as part of the Office of Management and Budget's (OMB) review of the definition of inherently governmental function and the manner in which agencies identify critical functions to be performed by Federal employees. OMB is performing this review in accordance with the President's March 4, 2009, Memorandum on Government Contracting and section 321 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

c. Covered employee. In order to simplify the regulation, the Councils defined the term ''covered employee'' so that term could be used in lieu of constantly repeating the phrase ''contractor employee who performs an acquisition function closely associated with inherently governmental functions''. In addition, the Councils have included in the definition of ''covered employee'' (i) subcontractor employees, (ii) consultants, (iii) partners, or (iv) sole proprietors. Although, these categories might not ordinarily be considered to be an employee of the contractor, the Councils believe that covering these categories is necessary to effectively meet the objective of the statute.

d. Non-public Government information. The statute requires that contractors must prohibit contractor employees who have access to non-public Government information obtained while performing such functions from using such information for personal gain. Therefore, a definition of ''non-public Government information'' is also necessary to implement the law. The Councils adapted the definition of non-public Government information found at 5 CFR 2635.703, the Office of Government Ethics regulation entitled ''Use of nonpublic information,'' to make it applicable to contractor employees. Non-public Government information means any information that a covered employee gains by reason of work under a Government contract and that the covered employee knows, or reasonably should know, has not been made public (*e.g.,* proprietary contractor information in the possession of the Government).

3. Policy (FAR 3.1102). The proposed policy would require contractors to identify and prevent personal conflicts of interest of their covered employees and prohibit covered employees who have access to non-public Government information from using such information for personal gain. The basis of the policy is derived from FAR section 841(a)(1)(B)(i) and (ii) of the statute.

4. Procedures (FAR 3.1103(a) and 52.203–16(b)).

a. Use of contract clause to impose requirements on contractors. The procedures at FAR 3.1103(a) mirror the requirements in paragraph (b) of the

clause, implementing the statutory requirement at FAR section 841(a)(1)(B) in more detail, adding the requirements to—

- Have procedures in place to screen covered employees for potential personal conflicts of interest (FAR section 841(a)(1)(B)(v));
- Inform covered employees with regard to their obligations to disclose and prevent personal conflicts of interest; not use non-public Government information for personal gain; and avoid even the appearance of personal conflicts of interest;
- Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards (FAR section 841(a)(1)(B)(iv));
- Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this section (FAR section 841(a)(1)(B)(vi)); and
- Report to the contracting officer any personal conflict-of-interest violation by a covered employee as soon as identified (FAR section 841(a)(1)(B)(iii)), including the actions taken by the contractor in response to the violation.

b. Contracting officer actions upon receipt of contractor reports of personal conflict-of-interest violation. At FAR 3.1103(b), the Councils have proposed the following general guidelines for the contracting officer to follow, upon receipt of a contractor report of a personal conflict-of-interest violation:

(i) Review the actions taken by the contractor;

(ii) Decide whether the contractor has resolved the violation satisfactorily; and

(iii) Take any other appropriate action in consultation with agency legal counsel or an agency ethics official.

c. Non-disclosure agreements. The proposed rule requires contractors to obtain non-disclosure agreements from covered employees.

5. Mitigation and waiver (FAR 3.1104 and 52.203–16(c)). Although the statute did not specifically provide for mitigation or waiver authority, the Councils recommend allowing the head of the contracting activity, in exceptional circumstances, to agree to mitigation of a personal conflict of interest or waive the requirement to prevent conflict of interest for a particular employee, if he/she determines in writing that such mitigation or waiver is in the best interest of the Government. This authority cannot be re-delegated.

6. Violations and remedies (FAR 3.1105 and 52.203–16(d)). To ensure compliance with this policy, the proposed rule includes a ''remedies'' clause that spells out the additional relief to which the Government may be entitled for contractor noncompliance, including suspension of contract payments, loss of award fee, termination for cause, and suspension or debarment. The Councils welcome comment on additional controls or remedies to help deter noncompliance, such as annual reporting requirements to verify compliance with the clause requirements, or certification by the contractor or by the contractor's employees.

7. Contract clause.

a. Prescription (FAR 3.1106). A new contract clause was developed that specifically sets out the contractor's duty to comply with the language in the legislation. In accordance with FAR section 841(a)(3)(A), the clause must be included in contracts that exceed the simplified acquisition threshold and are for services that involve performance of acquisition functions closely associated with inherently governmental functions for or on behalf of a Federal agency or department.

FAR Section 841(a)(3)(B) provides that, if only a portion of a contract is for the performance of acquisition functions described in that subparagraph, then the clause must be applied only to that portion of the contract (see FAR 3.1106(b)).

b. Flowdown (FAR 52.203–18(e)). The Councils have provided for flowdown to subcontracts that meet the same requirements as provided in the clause prescription, *i.e.*, subcontracts that exceed $100,000 and in which subcontractor employees may perform acquisition functions closely associated with inherently governmental functions.

8. Effective date and applicability. The statute requires that the final rule shall apply to—

(a) Contracts entered into on or after the effective date; and

(b) Task or delivery orders awarded on or after that effective date. If the contracts pursuant to which such task or delivery orders are awarded do not contain the clause at FAR 52.203–16, then the clause must be included in such contracts by bi-lateral modification.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the requirements of the clause are not significantly burdensome. The requirement to obtain and retain information on employees' potential conflict of interest is limited to service contractors whose employees are performing acquisition functions closely associated with inherently governmental functions for or on behalf of Federal agencies. This class is a minority of Government contractors and is becoming smaller as Government agencies bring more such functions back in house, *e.g.,* DOD announced in April that it is bringing 10,000 acquisition positions back in house. Further, there is no requirement to report the information collected to the Government. It is not a significant economic burden to report to the contracting officer personal conflict-of-interest violations by covered employees and the corrective actions taken. The proposed rule has also reduced potential burden by—

1. Not including a certification requirement;
2. Not requiring a formal training program; and
3. Allowing mitigation under exceptional circumstances.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 3 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008–025), in all correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does apply because the proposed changes to the FAR impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Annual Recordkeeping Burden

The proposed rule will require the contractor to collect and review information from covered employees. There is, however, no requirement for the contractor to submit this information to the Government. There will be an estimated 250,000 covered contractor employees working for an estimated 10,000 contractors (recordkeepers). There will be an estimated 36 records per recordkeeper (using an average of 25 employees per recordkeeper and allowing for updates during the year when a covered employee's reportable circumstances

change). We estimate that it will take approximately 10 minutes review time per response.

We estimate the annual total recordkeeping burden hours as follows:

Recordkeepers	10,000
Records per recordkeeper	× 36
Total annual records	360,000
Review hours per response	× 0.17
Total recordkeeping burden	61,200

Annual Reporting Burden

There will be an estimated 200 burden hours for the required reporting to the contracting officer of violations in connection with the award or performance of any Government contract or subcontract (10 violations × 2 hours per response) and 1,800 hours for submission of mitigation requests (450 responses × 4 hours per response).

We estimate the annual total reporting burden hours as follows:

Respondents: 460

Responses per respondent: 1

Total annual responses: 460

Preparation hours per response: Approximately 3.96

Total reporting burden hours: 1,820

D. Request for Comments Regarding Paperwork Burden

Submit comments, including suggestions for reducing this burden, not later than January 12, 2010 to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

Requester may obtain a copy of the justification from the General Services Administration, Regulatory Secretariat (MVPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–00xx, Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions, in all correspondence.

List of Subjects in 48 CFR Parts 3 and 52

Government procurement.

Dated: November 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 3 and 52 as set forth below:

1. The authority citation for 48 CFR parts 3 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Add Subpart 3.11 to read as follows:

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

Sec.

3.1100 Scope of subpart.
3.1101 Definitions.
3.1102 Policy.
3.1103 Procedures.
3.1104 Mitigation or waiver.
3.1105 Violations.
3.1106 Contract clause.

Subpart 3.11—Preventing Personal Conflicts of Interest for Contractor Employees Performing Acquisition Functions

3.1100 Scope of subpart.

This subpart implements the policy on personal conflicts of interest by employees of Government contractors as required by section 841(a) of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110–417).

3.1101 Definitions.

As used in this subpart:

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who—

(1) Is an employee of the contractor or subcontractor, a consultant, a partner, or a sole proprietor; and

(2) Performs an acquisition function closely associated with inherently governmental functions.

Non-public Government information means any information that a covered employee gains by reason of work under a Government contract and that the covered employee knows, or reasonably should know, has not been made public. It includes information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could impair the employee's ability to act impartially and in the best interest of the Government when performing under the contract.

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) Financial interests may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

3.1102 Policy.

It is Government policy to require contractors to—

(a) Identify and prevent personal conflicts of interest of their covered employees; and

(b) Prohibit covered employees who have access to non-public Government information from using such information for personal gain.

3.1103 Procedures.

(a) By use of the contract clause at 52.203–16, as prescribed at 3.1106, the contracting officer shall require each contractor whose employees perform acquisition functions closely associated with inherently Government functions to—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest including—

(i) Obtaining and maintaining a financial disclosure statement from each covered employee when the employee is initially assigned to the task under the contract;

(ii) Ensuring that the disclosure statements are updated by the covered employees at least on an annual basis; and

(iii) Requiring each covered employee to update the disclosure statement whenever a new personal conflict of interest occurs.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract if the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public Government information for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public Government information.

(3) Inform covered employees of their obligation—

(i) To disclose changes in personal or financial circumstances and prevent personal conflicts of interest;

(ii) Not to use non-public Government information for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this section; and

(6) Report to the contracting officer any personal conflict-of-interest violation by a covered employee as soon as identified. This report shall include a description of the violation and the actions taken by the contractor in response to the violation.

(b) If a contractor reports a personal conflict-of-interest violation to the contracting officer in accordance with paragraph (b)(6) of 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer shall—

(1) Review the actions taken by the contractor;

(2) Decide whether the contractor has resolved the violation satisfactorily; and

(3) Take any other appropriate action in consultation with agency legal counsel.

3.1104 Mitigation or waiver.

(a) In exceptional circumstances, if the contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of the clause at 52.203–16, Preventing Personal Conflicts of Interest, the contractor may submit a request, through the contracting officer, for the head of the contracting activity to—

(1) Agree to a plan to mitigate the personal conflict of interest; or

(2) Waive that requirement.

(b) If the head of the contracting activity determines in writing that such action is in the best interest of the Government, the head of the contracting activity may impose conditions that provide mitigation of a personal conflict of interest or grant a waiver.

(c) This authority shall not be redelegated.

3.1105 Violations.

(a) If the contracting officer suspects violation of a requirement of the clause 52.203–16, Preventing Personal Conflicts of Interest, the contracting officer shall contact the agency legal counsel for advice and/or recommendations on a course of action.

(b) If there is sufficient evidence of a violation, the contracting officer shall pursue appropriate remedies as specified in paragraph (d) of the clause. These remedies are in addition to any other remedies available to the Government.

3.1106 Contract clause.

(a) Insert the clause at 52.203–16, Preventing Personal Conflicts of Interest, in solicitations and contracts that—

(1) Exceed the simplified acquisition threshold; and

(2) Include a requirement for services that involve performance of acquisition functions closely associated with inherently governmental functions for or on behalf of a Federal agency or department.

(b) If only a portion of a contract is for the performance of acquisition functions closely associated with inherently governmental functions, then the contracting officer shall still insert the clause but shall limit applicability of the clause to that portion of the contract that is for the performance of such services.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 52.203–16 to read as follows:

52.203–16 Preventing Personal Conflicts of Interest.

Insert the following clause in solicitations and contracts as prescribed at 3.1106.

Preventing Personal Conflicts of Interest (Date)

(a) *Definitions.* As used in this clause:

Acquisition function closely associated with inherently governmental functions means supporting or providing advice or recommendations with regard to the following activities of a Federal agency:

(1) Planning acquisitions.

(2) Determining what supplies or services are to be acquired by the Government, including developing statements of work.

(3) Developing or approving any contractual documents, to include documents defining requirements, incentive plans, and evaluation criteria.

(4) Evaluating contract proposals.

(5) Awarding Government contracts.

(6) Administering contracts (including ordering changes or giving technical direction in contract performance or contract quantities, evaluating contractor performance, and accepting or rejecting contractor products or services).

(7) Terminating contracts.

(8) Determining whether contract costs are reasonable, allocable, and allowable.

Covered employee means an individual who—

(1) Is an employee of the contractor or subcontractor, a consultant, a partner, or a sole proprietor; or

(2) Performs an acquisition function closely associated with inherently governmental functions.

Non-public Government information means any information that a covered employee gains by reason of work under a Government contract and that the covered employee knows, or reasonably should know, has not been made public. It includes information that—

(1) Is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or otherwise protected from disclosure by statute, Executive order, or regulation; or

(2) Has not been disseminated to the general public and is not authorized by the agency to be made available to the public.

Personal conflict of interest means a situation in which a covered employee has a financial interest, personal activity, or relationship that could compete with the employee's ability to act impartially and in the best interest of the Government when performing under the contract.

(1) Among the sources of personal conflicts of interest are—

(i) Financial interests of the covered employee, of close family members, or of other members of the household;

(ii) Other employment or financial relationships (including seeking or negotiating for prospective employment or business); and

(iii) Gifts, including travel.

(2) Financial interests may arise from—

(i) Compensation, including wages, salaries, commissions, professional fees, or fees for business referrals;

(ii) Consulting relationships (including commercial and professional consulting and service arrangements, scientific and technical advisory board memberships, or serving as an expert witness in litigation);

(iii) Services provided in exchange for honorariums or travel expense reimbursements;

(iv) Research funding or other forms of research support;

(v) Investment in the form of stock or bond ownership or partnership interest (excluding diversified mutual fund investments);

(vi) Real estate investments;

(vii) Patents, copyrights, and other intellectual property interests; or

(viii) Business ownership and investment interests.

(b) *Requirements.* The Contractor shall—

(1) Have procedures in place to screen covered employees for potential personal conflicts of interest, including—

(i) Obtaining and maintaining a financial disclosure statement from each covered employee when the employee is initially assigned to the task under the contract;

(ii) Ensuring that the disclosure statements are updated by the covered employees at least on an annual basis; and

(iii) Requiring each covered employee to update the disclosure statement whenever his/her personal or financial circumstances change.

(2) For each covered employee—

(i) Prevent personal conflicts of interest, including not assigning or allowing a covered employee to perform any task under the contract if the Contractor has identified a personal conflict of interest for the employee that the Contractor or employee cannot satisfactorily prevent or mitigate in consultation with the contracting agency;

(ii) Prohibit use of non-public Government information for personal gain; and

(iii) Obtain a signed non-disclosure agreement to prohibit disclosure of non-public Government information.

(3) Inform covered employees of their obligation—

(i) To disclose and prevent personal conflicts of interest;

(ii) Not to use non-public Government information for personal gain; and

(iii) To avoid even the appearance of personal conflicts of interest;

(4) Maintain effective oversight to verify compliance with personal conflict-of-interest safeguards;

(5) Take appropriate disciplinary action in the case of covered employees who fail to comply with policies established pursuant to this clause; and

(6) Report to the Contracting Officer any personal conflict-of-interest violation by a covered employee as soon as it is identified. This report shall include a description of the violation and the actions taken by the Contractor in response to the violation. Personal conflict-of-interest violations include—

(i) Failure by a covered employee to disclose a personal conflict of interest; and

(ii) Use by a covered employee of non-public Government information for personal gain.

(c) *Mitigation or waiver.* (1) In exceptional circumstances, if the Contractor cannot satisfactorily prevent a personal conflict of interest as required by paragraph (b)(2)(i) of this clause, the Contractor may submit a request through the Contracting Officer to the Head of the Contracting Activity for—

(i) Agreement to a plan to mitigate the personal conflict of interest; or

(ii) A waiver of the requirement.

(2) The Contractor shall include in the request any proposed mitigation of the personal conflict of interest.

(3) The Contractor shall—

(i) Comply, and require compliance by the covered employee, with any conditions imposed by the Government as necessary to mitigate the personal conflict of interest; or

(ii) Remove the Contractor or subcontractor employee from performance of the contract or terminate the applicable subcontract.

(d) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (b), (c)(3), or (e) of this clause may render the Contractor subject to—

(1) Suspension of contract payments;

(2) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(3) Termination of the contract for default or cause, in accordance with the termination clause of this contract;

(4) Disqualification of the Contractor from subsequent related contractual efforts; or

(5) Suspension or debarment.

(e) *Subcontract flowdown.* The Contractor shall include the substance of this clause, including this paragraph (e), in subcontracts that exceed $100,000, and in which subcontractor employees may perform acquisition functions closely associated with inherently governmental functions.

(End of clause)

[FR Doc. E9–27309 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 234

[Docket No. FRA–2009–0032; Notice No. 3]

RIN 2130–AC20

State Highway-Rail Grade Crossing Action Plans

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: On September 2, 2009, FRA published a direct final rule in the **Federal Register** requiring the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State

highway-rail grade crossing action plans. FRA received one adverse comment regarding the direct final rule. Under FRA regulations, FRA must withdraw a direct final rule where an adverse comment is submitted. As a result, in a separate document elsewhere in this issue of the **Federal Register**, FRA is publishing a removal of the direct final rule provisions, which removes the changes effected by the direct final rule. FRA is also contemporaneously publishing this NPRM. The NPRM complies with a statutory mandate that the Secretary of Transportation (Secretary) issue a rule to require the ten States with the most highway-rail grade crossing collisions, on average, over the past three years, to develop State highway-rail grade crossing action plans. This proposed rule is not intended for general application; instead, it would only apply to the ten identified States with the most highway-rail grade crossing collisions over the specified period of time. The proposed rule addresses the contents of the highway-rail grade crossing action plans and certain time periods for plan implementation and coverage.

DATES: *Written Comments:* Written comments on the proposed rule must be received by December 14, 2009. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

Public Hearing: If any person desires an opportunity for oral comment, he or she should notify FRA in writing and specify the basis for the request. FRA will schedule a public hearing in connection with this proceeding if the agency received a written request for a hearing by December 14, 2009.

ADDRESSES: *Comments:* Comments related to Docket Number FRA–2009–0032, may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov*, including any personal information. *Please see* the Privacy Act heading later in this document for more Privacy Act information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to Room W12–140 on the Ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1200 New Jersey Ave., SE., RRS–23, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6299), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTARY INFORMATION:

I. Withdrawal of Direct Final Rule

Pursuant to FRA's direct final rulemaking procedures set forth at 49 CFR 211.33, FRA published a direct final rule in the **Federal Register** on September 2, 2009 (74 FR 45336). FRA received one adverse comment regarding the direct final rule. Pursuant to 49 CFR 211.33(d), FRA must withdraw a direct final rule where an adverse comment is submitted. FRA issued and submitted a notice of withdrawal to the Federal Register; however, due to regulatory production schedules and time constraints, the direct final rule was not withdrawn before its effective date. As a result, FRA is publishing a removal of the direct final rule provisions in this issue of the **Federal Register**, which removes the changes effected by the direct final rule, while contemporaneously publishing this NPRM.

II. Notice of Proposed Rulemaking

A. Background

The proposed rule is intended to reduce collisions at highway-rail grade crossings in the ten identified States, and to comply with section 202 of the Rail Safety Improvement Act of 2008 (RSIA), Public Law 110–432, Division A, which was signed into law on October 16, 2008. Section 202 requires the Secretary (delegated to the Federal Railroad Administrator by 49 CFR 1.49) to identify the ten States that have had the most highway-rail grade crossing collisions, on average, over the past three years, and to require those States to develop State highway-rail grade crossing action plans, within a reasonable period of time, as determined by the Secretary. Section 202 further provides that these plans must identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations, and must focus on crossings that have experienced multiple accidents or are at high risk for such accidents. FRA recommends that the action plans include a proposed implementation schedule, although FRA recognizes that any such schedule would be subject to many factors, including the availability of funds and personnel. In addition, any implementation schedule would only be for the purpose of providing quality planning for the timelines identified.

Section 202 also provides the following: The Secretary will provide assistance to the States in developing and carrying out such plans, as appropriate; the plans may be coordinated with other State or Federal planning requirements; the plans will cover a period of time determined to be appropriate by the Secretary; and the Secretary may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501, to a State identified under this section, on the development of such State's plan.

Lastly, section 202 provides a review and approval process under which, not later than 60 days after the Secretary receives such a State action plan, the Secretary must review and either approve or disapprove it. In the event that the proposed plan is disapproved, section 202 indicates that the Secretary shall notify the affected State as to the specific areas in which the proposed plan is deficient, and the State shall correct all deficiencies within 30 days following receipt of written notice from the Secretary.

B. State Identification

As discussed, Congress expressly directed the Secretary to identify the ten States that have had the most highway-rail grade crossing collisions, on average, over the past three years. FRA maintains a database of highway-rail grade crossing accidents/incidents occurring at public and private grade crossings, as such events must be reported to FRA pursuant to 49 CFR 225.19. From this database, FRA has identified the ten States with the most reported highway-rail grade crossing accidents/incidents at public and private grade crossings during 2006, 2007, and 2008, to be, as follows: Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio,

and Texas. FRA will issue letters to these identified States and copies of such letters will be placed in the public docket of this proceeding.

C. Time Period To Develop State Action Plan and Duration of Plan

Section 202 instructs the Secretary to determine the reasonable period of time within which the ten identified States must develop a State highway-rail grade crossing action plan and the period of time to be covered by such a plan. Based on previous experience working with States on highway-rail grade crossing action plans, FRA has determined that States can reasonably develop such plans within one year from the date this regulation goes into effect, and that such plans should cover a period of five years. A five-year period is appropriate because many of the remedial actions that may be included in these plans (e.g., closures and grade separations) may take up to five years to implement. In addition, any identified State that has already developed an action plan in conjunction with a recommendation from DOT's Office of Inspector General must ensure compliance with any final rule arising from this NPRM and must resubmit the plan as required.

D. Assistance and Coordination

FRA would be available, including FRA regional grade crossing managers and FRA experts from the grade crossing and trespasser prevention division, to provide assistance to States in developing and carrying out, as appropriate, the proposed State highway-rail grade crossing action plans. FRA's Safetydata Web site (*http://www.safetydata.fra.dot.gov*) also contains detailed data that may be of use in the development of the plans. In addition, the proposed State highway-rail grade crossing action plans may be coordinated with other State or Federal planning requirements. For example, States may want to coordinate such plans with their Strategic Highway Safety Plans that are required by SAFETEA–LU, as appropriate.

E. Conditioning the Awarding of Grants

Section 202 also empowers the Secretary to condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501, to an identified State under this section on the development of such State's plan. Although FRA does not anticipate employing this authority, FRA reserves its right to pursue such a course of action in the event that an identified State fails to comply with a final rule that arises from this proposed rule.

F. Section-by-Section Analysis

Section 234.1. This paragraph discusses the scope of this part. The amendment proposed to this paragraph would include reference to § 234.11, State Highway-Rail Grade Crossing Action Plans, as being within this part's scope.

Section 234.3. This paragraph discusses what entities are subject to this part. The amendment proposed to this paragraph would except § 234.11, State Highway-Rail Grade Crossing Action Plans, from discussion in this section.

Section 234.4. This paragraph discusses the preemptive effect of this part. The amendment proposed to this paragraph would permit State tort actions, arising from events or activities occurring on or after January 18, 2002, that: Allege a violation of the Federal standard of care established by this part; allege a failure to comply with a party's own plan, rule, or standard created pursuant to this part; or allege a violation of a State law, regulation, or order that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulation, or order of the United States Government, and does not unreasonably burden interstate commerce.

Section 234.6(a) and (b). These paragraphs discuss the civil and criminal penalties a person may be subject to when violating requirements of this part. The amendment proposed to these paragraphs would provide that a violation of § 234.11, State Highway-Rail Grade Crossing Action Plans, would not give rise to either a civil or criminal penalty.

Section 234.11(a). This paragraph discusses that the purpose of this proposed rule is to reduce collisions at highway-rail grade crossings in the ten identified States that have had the most highway-rail grade crossing collisions, on average, over the past three years. This paragraph proposes to make clear that the regulation would not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan, nor would it restrict any of the identified States from adopting a plan with additional or more stringent requirements not inconsistent with this regulation.

Section 234.11(b). This paragraph proposes that this section would apply to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008.

Section 234.11(c). This paragraph proposes to require that each of the ten identified States develop a State highway-rail grade crossing action plan and submit such plans to FRA for review and approval not later than one year after the date this proposed regulation goes into effect. This paragraph also details the proposed requirements of the State highway-rail grade crossing action plans, including that the plans: Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations; focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and cover a five-year period.

Section 234.11(d). This paragraph identifies the FRA contact information to which the identified States must direct the proposed highway-rail grade crossing action plans for review and approval. This paragraph also proposes that FRA would review and approve or disapprove a State highway-rail grade crossing action plan within 60 days of receiving the plan. This paragraph further proposes that, if the proposed State highway-rail grade crossing action plan is disapproved, FRA would notify the affected State as to the specific areas in which the proposed plan is deficient, and the State would have to correct all deficiencies within 30 days following receipt of written notice from FRA. Lastly, this paragraph proposes that FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of that State's highway-rail grade crossing action plan.

G. Regulatory Impact and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This discussion represents the regulatory impact analysis (RIA). There is not a separate RIA for inclusion in the public docket. This NPRM has been evaluated in accordance with existing policies and procedures, and has been determined not to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). The ten States identified are Alabama, California, Florida, Georgia, Illinois, Indiana, Iowa, Louisiana, Ohio, and Texas. These ten States would incur the full burden associated with implementation of this NPRM. The estimated quantified compliance cost for these ten States is approximately $259,000 over the next year. The benefits resulting from the prevention of collisions at highway-rail grade crossings are expected to exceed the burden. This analysis includes a quantitative burden measurement and a

qualitative benefit discussion for this NPRM. FRA requests comments on this economic analysis and its underlying assumptions.

The primary burden imposed would be for State labor resources spent to comply with development of the mandated action plans. FRA estimates that, on the average, each State would assign the plan development responsibilities to a team composed of a program manager, a project engineer, a budget analyst, a business specialist, and a legal expert. Listed in Table A are the aggregate salary estimates and man-year allocations for the entire mandated population.

TABLE A—AGGREGATED SALARY SUMMARY OF THE 10 IDENTIFIED STATES

Position	Salary	Hourly rate	Labor hours	Estimate
Program Manager, Transportation	$83,000.00	$39.90	40	$2,793.27
Project Engineer	69,000.00	33.17	80	4,644.23
Budget Analyst	52,000.00	25.00	40	1,750.00
Business Specialist, Transportation	43,000.00	20.67	400	14,471.15
Legal Expert	68,000.00	32.69	40	2,288.46
				25,947.12

The estimated cost is found as the product of the hourly rate, the labor hours, and an estimated overhead rate. Overhead is considered at 75% of the hourly rate. **Example Calculation:** [($39.90 per hour) * (40 hours) * (1 + .75 (overhead rate))] = $2,793.27.

The proposed submission process calls for FRA to review and approve each submitted plan according to the Federal mandate. FRA anticipates that the review time for each of the initial submissions would be 6 hours per plan. Listed in Table B is the aggregated federal burden for the initial and resubmitted plans.

TABLE B—FEDERAL COMPLIANCE SUMMARY

Tasking	States	Labor hours	Rate	Estimate
Plan Submission Review	10	6	$52.50	$5,512.50
				5,512.50

To summarize quantitatively, the State burden that would be imposed by this proposed rule was derived from the estimated sum of the original burden submission from the ten identified States and the burden resubmission from the quantum that may not comply during the initial submission. FRA considers $259,000 to represent the aggregated State burden for the one-year period of this proposed requirement. Listed in Table C is the aggregated burden summary.

TABLE C—AGGREGATED BURDEN SUMMARY

	Estimate	Quantity	Total estimates
State Submission Burden	$25,947.12	10	$259,471.15
			259,471.15

The development of State highway-rail grade crossing action plans would likely result in a reduction in highway-rail grade crossing collisions. Development of such plans would enhance these States' ability to view their population of grade crossings, interpret historical accident information, evaluate the overall state of highway-rail grade crossing safety, and identify particular areas in need of attention. Any patterns of collisions or causal factors would become more readily apparent as a result of the detailed study, assessment, and status reporting involved in the development of the State action plan. In these plans, each State would identify specific solutions for improving safety at individual crossings, including crossing closures or grade separations, with special focus on those crossings that are found to have experienced multiple accidents or that show a heightened risk for accidents. Special emphasis corridors or high risk corridors may also be identified as a result of the analysis component of the State action plan. As each State's highway-rail grade crossing action plan may be coordinated with other State or Federal planning requirements, additional benefits may be obtained through closer integration of grade crossing safety issues into the overall State transportation safety planning efforts.

During the three-year time period, 2006 through 2008, the ten States with the most grade crossing collisions, as currently reported, accounted for 51%, or almost 4,200 accidents, of all grade crossing collisions nationwide. Highway vehicle damage accounted for more than $28.5 million over this three-year time period, and a combined total of 546 lives were lost. Economic research indicates that $6.0 million per statistical life saved is a reasonable estimate of people's willingness to pay for transportation safety improvements. FRA therefore estimates an accumulated $3.28 billion to represent the statistical value of the lives lost as a result of grade crossing collisions in these ten States.

Finally, there were 1,666 injuries over the three-year time period in these ten States. Assuming very conservatively, for purposes of this analysis, that these were all minor in nature (e.g., injuries that may not require professional medical treatment and where recovery is usually rapid and complete) and thus assigning a cost of $12,000 per injury (i.e., 0.2% of the value of a statistical life), injury costs for this period totaled close to $20 million. Thus, the cost to society of the average incident in the three-year time period was $796,000. Prevention of one such incident alone would more than exceed the cost of implementing this proposed rule. FRA believes that it is reasonable to expect that such an incident may be prevented by the implementation of this proposed rule. In addition to the safety benefits, other potential benefits would include: Increased train and highway traffic mobility by reducing collisions, fewer demands on emergency services to respond to crossing collisions, and some improvement in air quality by reducing emissions from vehicles that are unable to move due to crossing collisions.

The findings of this analysis are sensitive to its assumptions. The burden estimates are largely driven by the composition of the State's team and the level of effort expended by each individual. Such factors may vary from team to team. FRA realizes that the level of expertise per State, per team, per member, would vary and, therefore, has applied a 20 percent sensitivity factor above and below the baseline as follows:

TABLE D—AGGREGATED SENSITIVITY ANALYSIS SUMMARY

	Estimate	Low	High
Aggregated Submission Burden	$259,471.15	$207,576.92	$311,365.38

Thus, when defining the projected cost burden to the individual States within the framework of team complexion and with regard to the estimated sensitivity of the individual expertise of the employee selected, FRA finds that it is reasonable to estimate that the burden could range from $20,800 to $31,100 per State. FRA finds that the total cost burden ranges from $208,000 to $311,000.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. *Id.* Additionally, section 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Such governments would not be directly impacted by this proposal.

FRA certifies that this proposal would not have a significant economic impact on a substantial number of small entities, as this rule only affects ten identified States. To the extent that this proposal would have any impact on small entities, FRA believes the impact would not be significant. FRA requests comments regarding this analysis.

Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The section that contains the new information collection requirements is noted below, and the estimated burden times to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response (hours)	Total annual burden hours
234.11—State Highway-Rail Grade Crossing Action Plans—Development and Submission of Plans.	10 States	10 plans	600	6,000
Disapproval of State Highway-Rail Grade Crossing Action Plan and Submission of Revised Plan.	10 States	5 revised plans	80	400

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Jackson at 202–493–6073.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Nakia Jackson, Federal Railroad Administration, 1200 New Jersey Avenue, SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via e-mail to Mr. Brogan or Ms. Jackson at the following address: *robert.brogan@dot.gov; nakia.jackson@dot.gov*.

OMB is required to make a decision concerning the collection of information

requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

Environmental Impact

FRA has evaluated this NPRM in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this NPRM that might trigger the need for a more detailed environmental review. As a result, FRA finds that this NPRM is not a major Federal action significantly affecting the quality of the human environment.

Federalism Implications

Executive Order 13132, ''Federalism'' (64 FR 43255, Aug. 4, 1999), requires FRA 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'' are 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, the agency may not issue a regulation with 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 the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM amends FRA's regulations regarding grade crossing safety. Subject to a limited exception for essentially local safety or security hazards, the requirements of FRA's regulations regarding grade crossing safety are intended to establish a uniform Federal safety standard that must be met, and State requirements covering the same subject would be displaced, whether those standards are in the form of State statutes, regulations, local ordinances, or other forms of State law, including common law. Section 20106 of Title 49 of the United States Code provides that all regulations prescribed by the Secretary related to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety or security hazard that is not incompatible with a Federal law, regulation, or order, and that does not unreasonably burden interstate commerce. This is consistent with past practice at FRA, and within the Department of Transportation.

FRA has analyzed this NPRM in accordance with the principles and criteria contained in Executive Order 13132. This NPRM complies with a statutory mandate. FRA has not consulted with State and local officials in regards to this rule. However, prior to enactment of the RSIA, FRA did consult with State officials in conjunction with a recommendation from DOT's Office of Inspector General that certain States develop highway-rail grade crossing action plans, similar to the plans required by the RSIA and this rule. Thus, FRA believes it is in compliance with Executive Order 13132.

This NPRM will not have a substantial effect on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. In addition, this NPRM will not have any federalism implications that impose substantial direct compliance costs on State and local governments.

FRA's regulations regarding grade crossing safety do not preempt actions under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part. Provisions of a railroad maintenance, inspection and testing program which exceed the requirements of this part are not included in the Federal standard of care. It is strongly in the interest of railroad safety for railroads to exceed the requirements of Federal law and FRA encourages railroads to do so. A railroad would be discouraged from setting a higher standard for itself if it would be held liable in tort for exceeding the requirements of Federal law, but failing to attain the higher standard set for itself. Section 20106 of Title 49 of the United States Code supports this distinction.

It is a settled principle of statutory construction that, if the statute is clear and unambiguous, it must be applied according to its terms. *Carcieri* v. *Salazar,* 555 U.S.—(2009). Read by itself, Section 20106(a) of Title 49 of the United States Code provides for an FRA rule, order or regulation to preempt state standards of care, but does not expressly state whether anything replaces the preempted standards of care for purposes of tort suits. The focus of that provision is clearly on who regulates railroad safety: The Federal government or the states. It is about improving railroad safety, for which Congress deems nationally uniform standards to be necessary in the great majority of cases. That purpose has collateral consequences for tort law which new Section 20106 subsections (b) and (c) address. New subsection (b)(1) creates three exceptions to the possible consequences flowing from subsection (a). One of those exceptions ((b)(1)(B)) precisely addresses an issue presented in *Lundeen* v. *Canadian Pacific Ry. Co.,* 507 F.Supp.2d 1006 (D. Minn., 2007) that Congress wished to rectify: It allows plaintiffs to sue a railroad in tort for violation of its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the Secretaries. None of those exceptions covers a plan, rule, or standard that a regulated entity creates for itself in order to produce a higher level of safety than Federal law requires, and such plans, rules, or standards were not at issue in *Lundeen.* The key concept of § 20106(b) is permitting actions under State law seeking

damages for personal injury, death, or property damage to proceed using a Federal standard of care. A plan, rule, or standard that a regulated entity creates pursuant to a Federal regulation logically fits the paradigm of a Federal standard of care—Federal law requires it and determines its adequacy. A plan, rule, or standard, or portions of one, that a regulated entity creates on its own in order to exceed the requirements of Federal law does not fit the paradigm of a Federal standard of care—Federal law does not require it and, past the point at which the requirements of Federal law are satisfied, says nothing about its adequacy. That is why FRA believes section 20106(b)(1)(B) covers the former, but not the latter. The basic purpose of the statute—improving railroad safety—is best served by encouraging regulated entities to do more than the law requires and would be disserved by increasing the potential tort liability of regulated entities that choose to exceed Federal standards, which would discourage them from ever exceeding Federal standards again.

In this manner, Congress adroitly preserved its policy of national uniformity of railroad safety regulation expressed in section 20106(a)(1) and assured plaintiffs in tort cases involving railroads, such as *Lundeen,* of their ability to pursue their cases by clarifying that federal railroad safety regulations preempt the standard of care, not the underlying causes of action in tort. Under this interpretation, all parts of the statute are given meanings that work together effectively and serve the safety purposes of the statute.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $141,300,000 or more in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. This NPRM will not result in the expenditure, in the aggregate, of $141,300,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this NPRM in accordance with Executive Order 13211. FRA has determined that this NPRM will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket 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://www.regulations.gov.*

List of Subjects in 49 CFR Part 234

Highway safety; Penalties; Railroad safety; and Reporting and recordkeeping requirements.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 234 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 234—GRADE CROSSING SIGNAL SYSTEM SAFETY AND STATE ACTION PLANS

1. The authority citation for part 234 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; Public Law 110–432, Div. A, § 202; and 49 CFR 1.49.

2. The heading for part 234 is revised to read as set forth above.

3. Section 234.1 is revised to read as follows:

§ 234.1 Scope.

This part imposes minimum maintenance, inspection, and testing standards for highway-rail grade crossing warning systems. This part also prescribes standards for the reporting of failures of such systems and prescribes minimum actions railroads must take when such warning systems malfunction. This part also requires particular identified States to develop State highway-rail grade crossing action plans. This part does not restrict a railroad or a State from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

4. Section 234.3 is revised to read as follows:

§ 234.3 Application.

With the exception of § 234.11, this part applies to all railroads except:

(a) A railroad that exclusively operates freight trains only on track which is not part of the general railroad system of transportation;

(b) Rapid transit operations within an urban area that are not connected to the general railroad system of transportation; and

(c) A railroad that operates passenger trains only on track inside an installation that is insular; i.e., its operations are limited to a separate enclave in such a way that there is no reasonable expectation that the safety of the public—except a business guest, a licensee of the railroad or an affiliated entity, or a trespasser—would be affected by the operation. An operation will not be considered insular if one or more of the following exists on its line:

(1) A public highway-rail crossing that is in use;

(2) An at-grade rail crossing that is in use;

(3) A bridge over a public road or waters used for commercial navigation; or

(4) A common corridor with a railroad, i.e., its operations are within 30 feet of those of any railroad.

5. Section 234.4 is revised to read as follows:

§ 234.4 Preemptive effect.

(a) Under 49 U.S.C. 20106, issuance of these regulations preempts any State law, regulation, order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; is not incompatible with a law, regulation, or order of the United States Government; and that does not impose an unreasonable burden on interstate commerce.

(b) This part establishes a Federal standard of care for the maintenance, inspection and testing of grade crossing warning systems. This part does not preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part. Provisions of a railroad maintenance, inspection and testing program which exceed the requirements of this part are not included in the Federal standard of care.

6. Section 234.6 is revised to read as follows:

§ 234.6 Penalties.

(a) *Civil Penalty.* Any person (an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: A railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee, or independent contractor) who violates any requirement of this part, except for any violation of § 234.11 of this part, or causes the violation of any such requirement is subject to a civil penalty of at least $650, but not more than $25,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $100,000 per violation may be assessed. Each day a violation continues shall constitute a separate offense. Appendix A to this part contains a schedule of civil penalty amounts used in connection with this rule. The railroad is not responsible for compliance with respect to any condition inconsistent with the technical standards set forth in this part where such variance arises as a result of actions beyond the control of the railroad and the railroad could not have prevented the variance through the exercise of due diligence. The foregoing sentence does not excuse any instance of noncompliance resulting from the actions of the railroad's employees, agents, or contractors.

(b) *Criminal Penalty.* Whoever knowingly and willfully makes, causes to be made, or participates in the making of a false entry in reports required to be filed by this part, or files a false report or other document required to be filed by this part, except for any document filed pursuant to § 234.11 of this part, is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).

Subpart B—Reports and Plans

7. The title to Subpart B—Reports is revised to read as set forth above.

8. Section 234.11 is added to read as follows:

§ 234.11 State highway-rail grade crossing action plans.

(a) *Purpose.* The purpose of this section is to reduce collisions at highway-rail grade crossings in the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008. This section does not restrict any other State, or other entity, from adopting a highway-rail grade crossing action plan. This section also does not restrict any of the States required to develop action plans under this section from adopting a highway-rail grade crossing action plan with additional or more stringent requirements not inconsistent with this section.

(b) *Application.* This section applies to the ten States that have had the most highway-rail grade crossing collisions, on average, during the calendar years 2006, 2007, and 2008.

(c) *Action Plans.* (1) The ten identified States shall each develop a State highway-rail grade crossing action plan and submit such a plan to FRA for review and approval not later than [DATE 1 YEAR FROM EFFECTIVE DATE OF FINAL RULE].

(2) A State highway-rail grade crossing action plan shall:

(i) Identify specific solutions for improving safety at crossings, including highway-rail grade crossing closures or grade separations;

(ii) Focus on crossings that have experienced multiple accidents or are at high risk for such accidents; and

(iii) Cover a five-year time period.

(d) *Review and Approval.* (1) State highway-rail grade crossing action plans required under paragraph (c) of this section shall be submitted for FRA review and approval using at least one of the following methods: Mail to the Associate Administrator for Railroad Safety/Chief Safety Officer, U.S. Department of Transportation, Federal Railroad Administration, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590; or e-mail to *rrs.correspondence@fra.dot.gov.*

(2) FRA will review and approve or disapprove a State highway-rail grade crossing action plan submitted pursuant to paragraph (d) of this section within 60 days of receipt.

(3) If the proposed State highway-rail grade crossing action plan is disapproved, FRA will notify the affected State as to the specific areas in which the proposed plan is deficient. A State shall correct all deficiencies within 30 days following receipt of written notice from FRA.

(4) FRA may condition the awarding of any grants under 49 U.S.C. 20158, 20167, or 22501 to an identified State on the development of such State's highway-rail grade crossing action plan.

Issued in Washington, DC, on November 5, 2009.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–27242 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 74, No. 218

Friday, November 13, 2009

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

[Docket No. AMS–FV–09–0059; FV09–981–3NC]

Notice of Request for Extension and Revision of 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 an extension for and revision of a currently approved information collection for Almonds Grown in California, M.O. No. 981.

DATES: Comments on this notice must be received by January 12, 2010.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; *Fax:* (202) 720–8938; or *Internet: http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Valerie L. Emmer-Scott, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; *Telephone:* (202) 205–2829, *Fax:* (202) 720–8938, or *E-mail: Valerie.Emmer@ams.usda.gov.*

Small businesses may request information on this notice by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, room 1406–S, Washington, DC 20250–0237; telephone (202) 720–2491, *Fax:* (202) 720–8938, or *E-mail: Jay.Guerber@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Almonds Grown in California, Marketing Order No. 981.

OMB Number: 0581–0242.

Expiration Date of Approval: March 31, 2010.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), to provide the respondents the type of service they request, and to administer the California almond marketing order program (order) (7 CFR part 981) which has been operating since 1950.

The order and its rules and regulations authorize the Almond Board of California (board), the agency responsible for local administration of the order, to require handlers and other certain entities to submit information.

In September 2007, a mandatory program was implemented under the order to help reduce the potential for Salmonella in almonds. The board has developed forms as a means for persons to file required information with the board relating to the treatment of almonds to reduce the potential for Salmonella. Almond handlers are required to submit annual treatment plans to the board and inspection agency regarding how they plan to treat their almonds to reduce the potential for Salmonella. Entities interested in being almond process authorities that validate technologies are required to submit an application to the board on ABC Form No. 51, ''Application for Process Authority for Almonds.'' Manufacturers in the United States, Canada, and Mexico interested in being approved to accept untreated almonds, provided they agree to treat the almonds themselves under the board's Direct Verifiable (DV) program are required to submit an application to the board on ABC Form No. 52, ''Application for Direct Verifiable (DV) Program for Further Processing of Untreated Almonds.'' Entities interested in being approved DV user auditors are required to submit an application to the board on ABC Form No. 53, ''Application for Direct Verifiable (DV) Program Auditors.''

The information collected would be used only by authorized representatives of USDA, including AMS, Fruit and Vegetable Programs' regional and headquarters' staff, and authorized employees and agents of the board. Authorized board employees, agents, and the industry are the primary users of the information and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 13.77 hours per response.

Respondents: Almond handlers; persons or organizations that would like to qualify to be board-approved process authorities that validate treatments and technologies; manufacturers who would like to qualify to participate in the board's DV program; and entities that would like to qualify as auditors under the DV program.

Estimated Number of Respondents: 175.

Estimated Number of Responses per Respondent: 1.74.

Estimated Total Annual Burden on Respondents: 4,200 hours.

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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference this docket number and the appropriate marketing order and be sent to the USDA in care of the Docket Clerk at the

address above. All comments received will be available for public inspection during regular business hours at the same address.

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.

Dated: October 27, 2009.

Rayne Pegg,

Administrator, Agricultural Marketing Service.

[FR Doc. E9–27230 Filed 11–12–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for 7 CFR part 4279.

DATES: Comments on this notice must be received by January 12, 2010 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Brenda Griffin, Loan Specialist, Business and Industry Division, Rural Business-Cooperative Service, U.S. Department of Agriculture, STOP 3224, 1400 Independence Ave., SW., Washington, DC 20250–3224. *Telephone:* (202) 720–6802. The TDD number is (800) 877–8339 or (202) 708–9300.

SUPPLEMENTARY INFORMATION:

Title: Guaranteed Loanmaking—Business and Industry Loans.

OMB Number: 0570–0017.

Expiration Date of Approval: February 28, 2010.

Type of Request: Extension of a Currently Approved Information Collection.

Abstract: The Business and Industry (B&I) Guaranteed Loan Program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act, as amended. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities. This purpose is achieved through bolstering the existing private credit structure through the guaranteeing of quality loans made by lending institutions, thereby providing lasting community benefits.

Estimate of Burden: Public reporting for this collection of information is estimated to average 2 hours per response.

Respondents: Business or other for-profit; State, Local or Tribal; Lenders, accountants, attorneys.

Estimated Number of Respondents: 870.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 8,686.

Estimated Total Annual Burden on Respondents: 19,907 hours.

Copies of this information collection can be obtained from Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0226.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy of RBS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to 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. Comments may be sent to Linda Watts Thomas, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: November 5, 2009.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. E9–27233 Filed 11–12–09; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Alpine County Resource Advisory Committee (RAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Alpine County Resource Advisory Committee (RAC) will hold its fourth meeting.

DATES: The meeting will be held on December 2, 2009, and will begin at 6 p.m. The meeting will be held in Alpine County at the Alpine Early Learning Center, 100 Foothill Road, Markleeville, CA 96120.

FOR FURTHER INFORMATION CONTACT: Marnie Bonesteel, RAC Coordinator, USDA, Humboldt-Toiyabe National Forest, Carson Ranger District, 1536 S. Carson Street, Carson City, NV 89701 (775) 884–8140; e-mail *mbonesteel@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Vote on committee bylaws and elect a chairperson (2) Vote on Title II projects (3) Public Comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: November 4, 2009.

Genny E. Wilson,

Designated Federal Officer.

[FR Doc. E9–27178 Filed 11–12–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Advisory Committee (DPAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes Provincial Advisory Committee will meet on November 18–19, 2009, to review accomplishments and to plan for focused and effective actions in the next three years. Members will meet at the Deschutes National Forest Supervisor's office (1001 SW. Emkay Drive, Bend, Oregon) at 3 p.m. on November 18 and carpool to the Lake Creek Lodge in Camp Sherman for an overnight stay, returning 3 p.m. the next day. An Open Public Forum is scheduled for 9:40–10 a.m. on November 19.

All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Chris Mickle. Province Liaison, Crescent

Ranger District, Highway 97, Crescent, Oregon, 97733, Phone (541) 433–3216.

John Allen,

Deschutes National Forest Supervisor.

[FR Doc. E9–27274 Filed 11–12–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Response to Office Action and Preliminary Amendment Forms

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 the revision of a continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before January 12, 2010.

ADDRESSES: You may submit comments by any of the following methods:

* *E-mail: Susan.Fawcett@uspto.gov.* Include ''0651–0050 Electronic Response to Office Action and Preliminary Amendment Forms collection comment'' in the subject line of the message.
* *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
* *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
* *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Janis Long, Attorney Advisor, Office of the Commissioner for Trademarks, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, by telephone at 571–272–9573, or by e-mail to *Janis.Long@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The United States Patent and Trademark Office (USPTO), pursuant to the Trademark Act, 15 U.S.C. 1051 *et seq.* and Chapter 37 of the Code of Federal Regulations, issues Office Actions in which it requests that applicants for trademark registration furnish information that is required for the issuance of a registration but that was not provided with the initial submission of the application for registration. The Response to Office Action form may be used to reply to an Office Action that was issued in connection with an application for registration or after the submission of a Statement of Use.

Additionally, applicants may supplement their applications by providing additional information voluntarily. When such information is provided before the USPTO has reviewed the application, the submission is in the nature of a Preliminary Amendment.

The Request for Reconsideration after Final Action is filed after issuance of a final Office Action but before the deadline for filing an appeal. Filing the Request for Reconsideration early in the six-month response period can eliminate the need for some appeals or petitions and reduce the need for remands and transfers of applications on appeal.

Applicants may also file a Post Publication Amendment in order to submit a proposed amendment to an application that has already been approved for publication by the examining attorney. If an applicant receives a Suspension Inquiry or Letter of Suspension from the USPTO, the applicant may use the response form to file a reply.

II. Method of Collection

The forms in this collection are available in electronic format through the Trademark Electronic Application System (TEAS), which may be accessed on the USPTO Web site. Applicants may also submit the information in paper form by mail, fax or hand delivery.

III. Data

OMB Number: 0651–0050.

Form Number(s): PTO Forms 1771, 1822, 1957, 1960 and 1966.

Type of Review: Revision of a currently approved collection.

Affected Public: Primarily business or other for-profit organizations.

Estimated Number of Respondents: 208,360 per year.

Estimated Time Per Response: The USPTO estimates that it will take approximately 10 minutes (0.17 hours) to 23 minutes (0.38 hours) to gather the necessary information, create the document, and submit the completed request, depending on whether the information is submitted electronically or on paper.

Estimated Total Annual Respondent Burden Hours: 57,416 hours per year.

Estimated Total Annual Respondent Cost Burden: $17,798,960. The USPTO believes that attorneys will complete the information in this collection. The professional hourly rate for attorneys in private firms is $310. This is a fully-loaded hourly rate. Therefore, the USPTO estimates that the respondent cost burden for this collection will be approximately $17,798,960 per year.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Response to Office Action (TEAS)	17 minutes	165,000	46,200
Preliminary Amendment (TEAS)	17 minutes	11,000	3,080
Request for Reconsideration after Final Action (TEAS)	17 minutes	16,500	4,620
Post Publication Amendment (TEAS)	20 minutes	3,600	1,188
Post Publication Amendment (paper)	23 minutes	720	274
Response to Suspension Inquiry or Letter of Suspension (TEAS)	10 minutes	9,700	1,649
Response to Suspension Inquiry or Letter of Suspension (paper)	13 minutes	1,840	405
TOTAL		208,360	57,416

Estimated Total Annual (Non-hour) Respondent Cost Burden: $1,126. There are no capital start-up, operation, maintenance or record keeping costs, nor are there filing fees associated with this information collection.

Customers incur postage costs when submitting non-electronic information to the USPTO by mail through the United States Postal Service. The USPTO estimates that the majority of submissions for these paper forms are

made via first class mail at a cost of 44 cents per submission. Therefore, the total estimated postage cost for this collection is $1,126 (2560 responses × $0.44).

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: November 5, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. E9–27331 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS78

Incidental Taking of Marine Mammals; Taking of Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; issuance of a letter of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) and implementing regulations, notification is hereby given that NMFS has issued a one-year Letters of Authorization (LOA) to take marine mammals incidental to the explosive removal of offshore oil and gas structures (EROS) in the Gulf of Mexico.

DATES: This authorization is effective from November 10, 2009 through November 9, 2010.

ADDRESSES: The application and LOAs are available for review by writing to P. Michael Payne, Chief, Permits, Conservation, and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3235 or by telephoning the contact listed here (see **FOR FURTHER INFORMATION CONTACT**), or online at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm*. Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address.

FOR FURTHER INFORMATION CONTACT: Howard Goldstein or Ken Hollingshead, Office of Protected Resources, NMFS, 301–713–2289.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by United States citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made by NMFS and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture, or kill or to attempt to harass, hunt capture, or kill marine mammals.

Authorization for incidental taking, in the form of annual LOAs, may be granted by NMFS for periods up to five years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat (i.e., mitigation), and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating rounds, and areas of similar significance. The regulations also must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking incidental to EROS were published on June 19, 2008 (73 FR 34889), and remain in effect through July 19, 2013. For detailed information on this action, please refer to that **Federal Register** notice. The species that applicants may take in small numbers during EROS activities are bottlenose dolphins (*Tursiops truncatus*), Atlantic spotted dolphins (*Stenella frontalis*), pantropical spotted dolphins (*Stenella attenuata*), Clymene dolphins (*Stenella clymene*), striped dolphins (*Stenella coeruleoalba*), spinner dolphins (*Stenella longirostris*), rough-toothed dolphins (*Steno bredanensis*), Risso's dolphins (*Grampus griseus*), melon-headed whales (*Peponocephala electra*), short-finned pilot whales (*Globicephala macrorhynchus*), and sperm whales (*Physeter macrocephalus*).

Pursuant to these regulations, NMFS has issued an LOA to Tarpon Operating & Development, L.L.C. Issuance of the LOA is based on a finding made in the preamble to the final rule that the total taking by these activities (with monitoring, mitigation, and reporting measures) will result in no more than a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on subsistence uses. NMFS also finds that the applicant will meet the requirements contained in the implementing regulations and LOA, including monitoring, mitigation, and reporting requirements.

Dated: November 6, 2009.

James H. Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–27316 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS84

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting of the North Pacific Fishery Management Council and Alaska Board of Fisheries.

SUMMARY: The North Pacific Fishery Management Council (Council) and the Alaska Board of Fisheries will meet in Anchorage, AK.

DATES: The meeting will be held on December 8, 2009, from 10 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 W 3rd Avenue, Aleutian Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Jane Dicosimo; telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: Review Joint Protocol; Status of Steller Sea Lion Biological Opinion; Discuss Board proposals potentially affecting federal groundfish fisheries; Status of proposed GOA cod federal actions; Status of chum salmon bycatch action; Crab and Scallop annual catch limits; Update on Council community outreach; Update on Walrus and fishery interaction issues; Update on Arctic Fishery Management Plan; Update on Federal Observer Program changes; Other business. The Agenda is subject to change, and the latest version will be posted at *http://www.alaskafisheries.noaa.gov/npfmc/*.

Although other non-emergency issues not on the agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: November 9, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27265 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS85

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a joint meeting of the Standing and Special Reef Fish Scientific and Statistical Committees.

DATES: The meeting will convene at 1 p.m. on Tuesday, December 1, 2009 and conclude by 12 p.m. on Thursday, December 3, 2009. The meeting will be webcast over the internet. A link to the webcast will be available on the Council's web site, *http://www.gulfcouncil.org*.

ADDRESSES: The meeting will be held at the Hilton, 901 Airline Drive, Kenner, LA 70062.

Council address: Gulf of Mexico Fishery Management Council, 2203 N. Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: On the first day of the meeting, the Standing and Special Reef Fish Scientific and Statistical Committees and the Red Snapper Advisory Panel will meet jointly to hear a presentation on the update stock assessment for red snapper. Following the presentation, the Scientific and Statistical Committees and Advisory Panel will reconvene separately to continue any discussion of the update stock assessment and make any management recommendations. The Scientific and Statistical Committees will evaluate the adequacy of the assessment for management purposes and will recommend a level of acceptable biological catch. The acceptable biological catch is a catch level which the Council cannot exceed when setting the annual catch limit for red snapper. The Scientific and Statistical Committees will also review a draft Acceptable Biological Catch Control Rule that is being developed by an Acceptable Biological Catch Control Rule Working Group, will discuss acceptable biological catch Control rules for data-moderate and data-poor stocks, review analyses of species groupings and recommend groupings for Acceptable Biological Catches, and discuss the next steps to take in the development of acceptable biological catch control rules. The recommendations made by the Scientific and Statistical Committees will be presented to the Council at its February 1 - 4, 2010 meeting in Mobile, AL.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org*.

Although other non-emergency issues not on the agenda may come before the Scientific and Statistical Committees for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Scientific and Statistical Committees will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 9, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27266 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS86

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a meeting of the Red Snapper Advisory Panel.

DATES: The meeting will convene at 1 p.m. on Tuesday, December 1, 2009 and conclude by 3 p.m. on Wednesday, December 2, 2009. The meeting will be webcast over the internet. A link to the webcast will be available on the Council's web site, *http://www.gulfcouncil.org*.

ADDRESSES: The meeting will be held at the Hilton, 901 Airline Drive, Kenner, LA 70062.

Council address: Gulf of Mexico Fishery Management Council, 2203 N.

Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Fishery Biologist; Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: On the first day of the meeting, the Standing and Special Reef Fish Scientific and Statistical Committees and the Red Snapper Advisory Panel will meet jointly to hear a presentation on the update stock assessment for red snapper. Following the presentation, Special Reef Fish Scientific and Statistical Committees and the Red Snapper Advisory Panel will reconvene separately to continue any discussion of the update stock assessment and make any management recommendations. Other issues on the agenda include: red snapper season openings and closings, settlements for recreational fishing violations, and potential donation of seized catches. There will also be election of a chair and vice-chair. The comments and recommendations made by the Red Snapper Advisory Panel will be presented to the Council at its February 1 - 4, 2010 meeting in Mobile, AL.

Copies of the agenda and other related materials can be obtained by calling (813) 348–1630 or can be downloaded from the Council's ftp site, *ftp.gulfcouncil.org*.

Although other non-emergency issues not on the agenda may come before the Advisory Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the Advisory Panel will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: November 9, 2009.

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E9–27267 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 0648–XS76

Multi-species Habitat Conservation Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; Fish and Wildlife Service, Interior.

ACTION: Notice of availability of draft environmental impact statement, multi-species habitat conservation plan, and receipt of application; notice of public meeting.

SUMMARY: This notice announces the availability of a Draft Environmental Impact Statement (DEIS), proposed Multi-Species Habitat Conservation Plan (HCP), and associated Implementation Agreement (IA), for public review and comment. Fruit Growers Supply Company has submitted separate applications to the National Marine Fisheries Service (NMFS) and to the U.S. Fish and Wildlife Service (FWS) for 50–year incidental take permits under section 10 of the Endangered Species Act (ESA) of 1973, as amended.

DATES: Written comments on the proposed HCP, IA, and DEIS must be received by 5 p.m. Pacific Time on February 11, 2010.

ADDRESSES: Address all comments concerning the proposed HCP and DEIS to Lisa Roberts, and send by any one of the following methods, U.S. Mail: National Marine Fisheries Service, Arcata Area Office, 1655 Heindon Rd, Arcata, CA 95521; Fax: (707) 825–4840; E-mail: *FGSHCP.SWR@noaa.gov*. In the subject line of the e-mail, include the document identifier: FGS HCP.

A public meeting will be held on December 2, 2009, 6–8 p.m. at the Best Western Miners Inn Convention Center, 122 East Miner Street, Yreka, CA 96097.

FOR FURTHER INFORMATION CONTACT: For further information, or to receive a copy of the documents, please contact Lisa Roberts, Fisheries Biologist, National Marine Fisheries Service, (707) 825–5178. The HCP and DEIS are also available electronically for review on the NMFS Southwest Region website at: *http://swr.nmfs.noaa.gov*, or the FWS Yreka office website at: *www.fws.gov/yreka/*.

SUPPLEMENTARY INFORMATION: The documents being made available include (1) the proposed HCP, (2) the IA, and (3) the DEIS. This notice is provided pursuant to the ESA and the National Environmental Policy Act (NEPA) as amended. NMFS and FWS are furnishing this notice to allow other agencies and the public an opportunity to review and comment on these documents. All comments received will become part of the public record for this action. Hard bound copies of the HCP, IA, and DEIS are available for viewing, or for partial or complete duplication, at the following locations:

1. Siskiyou County Library, 719 4th St., Yreka, CA 96097.
2. Humboldt County Library, 1313 3rd St., Eureka, CA 95501.
3. Del Norte County Library, 190 Price Mall, Crescent City, CA 95531.
4. National Marine Fisheries Service, 1655 Heindon Rd., Arcata, CA 95521.
5. Yreka Fish and Wildlife Office, 1829 South Oregon St., Yreka, CA 96097.

Background

Section 9 of the ESA prohibits the ''take'' of wildlife species listed as endangered or threatened by either the FWS or NMFS (16 USC 1538). The ESA defines the term ''take'' as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. ''Harm'' is defined to include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, spawning, migrating, rearing, and sheltering (64 FR 60727). Pursuant to section 10(a)(1)(B) of the ESA, FWS and NMFS may issue ITPs authorizing the take of listed species if, among other things, such taking is incidental to, and not the purpose of, otherwise lawful activities.

Take of listed plant species is not prohibited under the ESA, and cannot be authorized under a section 10 permit. However, the applicant proposes to include Yreka phlox (Phlox hirsuta) in the HCP to extend the plan's conservation benefits to this species. The applicant would receive assurances under the ''No Surprises'' regulations found in 50 CFR 17.22(b)(5), 17.32(b)(5), and 222.307(g) for all proposed covered species in the ITP.

To receive an ITP under the ESA, an applicant must prepare an HCP that specifies the following: (1) the impact of the taking; (2) steps the applicant will take to minimize and mitigate the impact; (3) funding available to implement the steps; (4) what

alternative actions to the taking the applicant considered and the reasons why these actions were not taken; and (5) any other measures NMFS or FWS may require as being necessary or appropriate for the purpose of the plan (16 USC 1539(a)(2)(A)). To issue a permit, NMFS and FWS must find that: (1) the taking will be incidental; (2) the applicant will minimize and mitigate impacts of the take to the maximum extent practicable; (3) the applicant will ensure adequate funding for the HCP; (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and (5) the applicant will meet other measures required by FWS and NMFS. Regulations governing issuance of FWS permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, and for NMFS-issued permits at 50 CFR 222.301 through 307.

The applicant has prepared a multi-species HCP and has applied for ITPs under the ESA. The HCP applies to 152,163 acres of commercial timberland owned by Fruit Growers Supply Company in Siskiyou County, California. The ownership consists of three management units: Klamath River (64,867 acres), Scott Valley (38,814 acres), and Grass Lake (48,482 acres). The Klamath River and Scott Valley management units are located west of Interstate 5, adjacent to and intermixed with Klamath National Forest (KNF) lands. The Grass Lake management unit (also adjacent to the KNF) lies east of Interstate 5 and predominantly north of State Highway 97. These lands are referred to as the Plan Area.

The applicant has requested coverage from FWS for northern spotted owl (*Strix occidentalis caurina*) and Yreka phlox (*Phlox hirsuta*), and from NMFS for the Southern Oregon/Northern California Coasts coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU). The applicant also has requested coverage under the ITP for the unlisted Klamath and Trinity Rivers Chinook salmon (*O. tshawytscha*) ESU and the Klamath Mountains Province steelhead (*O. mykiss*) ESU. Should these unlisted covered species become listed under the ESA during the term of the permit, take authorization for those species would become effective upon listing. The HCP describes the habitat-based conservation approach, with species-specific objectives. This includes an Aquatic Species Conservation Program for salmonids and Terrestrial Species Conservation Program for the northern spotted owl and Yreka phlox.

Activities proposed for ITPs coverage include mechanized timber harvest; forest product transportation; road and landing construction, use, maintenance, and abandonment; site preparation; tree planting; certain types of vegetation management; silvicultural thinning and other silvicultural activities; fire suppression; rock quarry and borrow pit operations; aquatic habitat restoration; minor forest management activities such as forest product collecting; and monitoring activities and scientific work in the Plan Area.

The proposed duration of the ITPs and HCP is 50 years, though many aspects of the plan's conservation strategy are intended to benefit the covered species long into the future. The goals of this HCP are to: (1) protect and improve habitats required by species covered by the HCP and (2) establish appropriate guidelines for continuing timber harvests and other forest management activities.

National Environmental Policy Act Compliance

NMFS and FWS formally initiated an environmental review of the project through publication of a Notice of Intent to prepare an Environmental Impact Statement in the **Federal Register** on February 22, 2008 (73 FR 9776). That document also announced a public scoping period during which interested parties were invited to provide written comments expressing their issues or concerns relating to the proposal and attend one of two public scoping meetings held in Yreka and Happy Camp, California.

NMFS and FWS have jointly prepared a DEIS to analyze the effects of alternatives on the human environment. Proposed issuance of the associated ITPs from both NMFS and FWS for covered species and applicant implementation of the HCP make up the Proposed Alternative in the DEIS. The other alternatives analyzed in the DEIS include: (1) the No Action Alternative (ITPs would not be issued and there would not be an HCP); (2) Alternative A (ITPs would be issued by both agencies, and northern spotted owl conservation areas would be based on the Northwest Forest Plan (NWFP) system of late-successional reserves (LSRs), and the Aquatic Species Conservation Program would be based on concepts outlined in the NWFP for the protection of aquatic habitats); and (3) Alternative B (FWS would issue an ITP for northern spotted owl, with spotted owl conservation based on management of foraging and dispersal habitat across the Plan Area).

Public Comments

If you wish to comment on the permit application, the HCP, IA, or DEIS, you may submit your comments to the address listed in the **ADDRESSES** section of this document. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Lisa Roberts, National Marine Fisheries Service (707) 825–5178, at least 5 working days prior to the meeting date.

Next Steps

NMFS and FWS will evaluate the applications, associated documents, and comments submitted to them to prepare a final EIS. A permit decision will be made no sooner than 30 days after the publication of the final EIS and completion of the Record of Decision.

Dated: November 5, 2009.

Alexandra Pitts,

Acting Deputy Regional Director, Pacific Southwest Region, U.S. Fish and Wildlife Service.

Dated: November 9, 2009.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–27318 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 0911041393–91393–01]

New NOAA Cooperative Institutes (CIs): (1) A CI to Support NOAA Research Facilities in the Pacific Northwest; (2) A CI for Southwestern U.S. Marine Ecosystems, Climate, and Ocean Studies; and (3) A Southeastern Regional CI for Atmospheric and Marine Studies.

AGENCY: Oceanic and Atmospheric Research (OAR), National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric

Administration (NOAA), Department of Commerce.

ACTION: Notice of funding availability.

SUMMARY: The Office of Oceanic and Atmospheric Research (OAR) and the National Marine Fisheries Service (NMFS) publish this notice to provide the general public with a consolidated source of program and application information related to three single competitive cooperative agreement award offerings. NOAA is accepting applications for: (1) A CI to Support NOAA Research Facilities in the Pacific Northwest; (2) a CI for Southwestern U.S. Marine Ecosystems, Climate and Ocean Studies; and (3) a Southeastern Regional CI for Atmospheric and Marine Studies. Applicants should review the CI Interim Handbook prior to preparing a proposal for this announcement (*http://www.nrc.noaa.gov/ci*).

DATES: Proposals must be received no later than February 10, 2010, 5 p.m., E.T. Proposals submitted after that date will not be considered.

ADDRESSES: Applicants are strongly encouraged to apply online through the Grants.Gov Web site (*http://www.grants.gov*). Paper submissions are acceptable only if Internet access is not available. Grants.gov requires applicants to register with the system prior to submitting an application. This registration process can take several weeks, involving multiple steps. In order to allow sufficient time for this process, you should register as soon as you decide that you intend to apply, even if you are not yet ready to submit your proposal. If an applicant has problems downloading the application package from Grants.gov, contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov*.

If a hard copy application is submitted, the original and two unbound copies of the proposal should be included. Paper submissions should be sent to: Dr. John Cortinas, NOAA/OAR, 1315 East-West Highway, Room 11326, Silver Spring, MD 20910; telephone (301) 734–1090. No e-mail or facsimile proposal submissions will be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Dr. John Cortinas, NOAA/OAR, 1315 East-West Highway, Room 11326, Silver Spring, MD 20910; *telephone:* (301) 734–1090; *e-mail: John.Cortinas@noaa.gov*.

SUPPLEMENTARY INFORMATION: All applicants must comply with all requirements contained in the Federal Funding Opportunity (FFO) announcements for each of these CIs.

CI Concept/Program Background: A CI is a NOAA-supported, nonfederal organization that has established an outstanding research program in one or more areas that are relevant to the NOAA mission. CIs are established at research institutions with outstanding graduate degree programs in NOAA-related sciences. CIs provide significant coordination of resources among all non-government partners and promote the involvement of students and postdoctoral scientists in NOAA-funded research. The CI provides mutual benefits with value provided by all parties. For each CI, NOAA has identified the need to establish a CI to focus on scientific research associated in support of NOAA's Strategic Plan, NOAA's 5-year Research Plan, and NOAA's 20-year Research Vision. (All documents are available at *http://www.nrc.noaa.gov/plans.html*).

A CI may partner with one or more research institutions that demonstrate outstanding performance within one or more established research programs in NOAA-related sciences, including Minority Serving Institutions and universities that can contribute to the proposed activities of the CI. If a CI is awarded to a consortium of institutions, the consortium must propose a governance structure that includes a single director and one award.

CIs will conduct research under approved scientific research themes, described in detail in Section I.B of each Federal Funding Opportunity announcement. Activities of the CI are usually organized into three Tasks (additional tasks can be proposed by the CI).

i. Task I activities are related to the management of the CI, as well as general education and outreach activities. This task also includes support of postdoctoral and visiting scientists conducting activities within the research themes of the CI that are approved by the CI Director, in consultation with NOAA, and are relevant to NOAA and the CI's mission goals.

ii. Task II activities usually involve on-going direct collaboration with NOAA scientists. This collaboration typically is fostered by the collocation of Federal and CI employees.

iii. Task III activities require minimal collaboration with NOAA scientists and may include research funded by other NOAA competitive grant programs.

Base funding for Task 1 is provided annually by NOAA to the CI, contingent upon the availability of Federal appropriations. Throughout the award period, funding for additional Task I activities, as well as Task II and III (or other tasks by a particular CI) activities is added to the CI award as research project proposals are submitted by the CI and approved by NOAA.

Request for Applications

Generally, applications must include all relevant Federal Standard Forms, a project description that includes sufficient information to address all the evaluation criteria identified in the FFO announcement, a budget, and a budget justification. The project description must include a thorough explanation of all themes and Tasks. The application should also identify the capability and the capacity of the CI to conduct research in the themes described in the FFO, as well as a summary of clearly stated goals to be achieved, reflecting NOAA's strategic goals and vision. Additional elements may also be requested. Applicants are directed to the FFO for all application information and requirements.

CI To Support NOAA Research Facilities in the Pacific Northwest

The proposed Pacific Northwest CI should possess outstanding capabilities to provide research under seven themes: (1) Ocean and coastal observations, (2) climate research and impacts, (3) environmental chemistry, (4) seafloor processes, (5) marine ecosystems, (6) protection and restoration of marine resources, and (7) tsunami observations and modeling. To conduct research under these themes, the proposed CI should possess the flexibility needed to work on multi-disciplinary research in collaboration with NOAA's Pacific Marine Environmental Laboratory, Climate Program Office, Alaska Fisheries Science Center, Northwest Fisheries Science Center, other CIs, and relevant Sea Grant programs. The location of the CI is required to be within a daily commuting distance to the Pacific Northwest NOAA facilities in Seattle, Washington, to promote ongoing close collaborations and training for the next generation of NOAA scientists. If the proposed CI is comprised of multiple member institutions, only the lead institution applying for the award and where the CI will be established must satisfy the daily commuting distance requirement.

Funding Availability: The award period will be 5 years, and may be renewed for up to an additional 5 years based on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of Federal appropriations. NOAA anticipates that up to approximately $20M will be available annually for this CI. Of that amount, approximately

$500,000 will be available per year for Task I. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. The actual annual funding that the CI receives may be less than the anticipated amount and will depend on the actual projects that are proposed by the CI and approved by NOAA after the main CI award begins, the availability of funding, the quality of the research, the satisfactory progress in achieving the stated goals described in project proposals, and continued relevance to program objectives.

CI for Southwestern U.S. Marine Ecosystems, Climate, and Ocean Studies

The proposed Southwestern U.S. CI should possess outstanding capabilities to provide research under four themes: (1) Climate and coastal observations, analysis and prediction; (2) climate research and impacts; (3) marine ecosystems; and (4) ecosystem management. To conduct research under these themes, the proposed CI should possess the flexibility needed to work on multi-disciplinary research in collaboration with NOAA's Southwest Fisheries Science Center, Climate Program Office, relevant Sea Grant programs, and other CIs. The location of the CI is required to be within a daily commuting distance to the Southwest Fisheries Science Center in La Jolla, California, to promote ongoing close collaborations with NOAA and training for the next generation of NOAA scientists. If the proposed CI is comprised of multiple member institutions, only the lead institution applying for the award and where the CI will be established must satisfy the daily commuting distance requirement.

Funding Availability: The award period will be 5 years, and may be renewed for up to an additional 5 years based on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of Federal appropriations. NOAA anticipates that up to approximately $11M will be available annually for this CI. Of that amount, approximately $500,000 will be available per year for Task I. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. The actual annual funding that the CI receives may be less than the anticipated amount and will depend on the actual projects that are proposed by the CI and approved by NOAA after the main CI award begins, the availability of funding, the quality of the research, the satisfactory progress in achieving the stated goals described in project proposals, and continued relevance to program objectives.

Southeastern Regional CI for Atmospheric and Marine Studies

The proposed Southeastern Regional CI should possess outstanding capabilities to provide research under seven themes: (1) Sustained ocean and coastal observations, (2) climate research and impacts, (3) tropical weather, (4) ocean modeling, (5) ecosystem modeling and forecasting, (6) ecosystem management, and (7) protection and restoration of resources. To conduct research under these themes, the proposed CI should possess the flexibility needed to work on multi-disciplinary research in collaboration with NOAA's Southeast Fisheries Science Center, Atlantic Oceanographic and Meteorological Laboratory, relevant Sea Grant programs, and other CIs. The location of the CI is required to be within a daily commuting distance to NOAA's Atlantic Oceanographic and Meteorological Laboratory and Southeast Fisheries Science Center in Miami, Florida, to promote ongoing close collaborations with NOAA and training for the next generation of NOAA scientists. If the proposed CI is comprised of multiple member institutions, only the lead institution applying for the award and where the CI will be established must satisfy the daily commuting distance requirement.

Funding Availability: The award period will be 5 years, and may be renewed for up to an additional 5 years based on the outcome of a CI review in the fourth year. All funding is contingent upon the availability of Federal appropriations. NOAA anticipates that up to approximately $10M will be available annually for this CI. Of that amount, approximately $500,000 will be available per year for Task I. The final amount of funding available for Task I will be determined during the negotiation phase of the award based on availability of funding. The actual annual funding that the CI receives may be less than the anticipated amount and will depend on the actual projects that are proposed by the CI and approved by NOAA after the main CI award begins, the availability of funding, the quality of the research, the satisfactory progress in achieving the stated goals described in project proposals, and continued relevance to program objectives.

Electronic Access: Applicants can access, download, and submit electronic grant applications, including the full funding opportunity announcement, for NOAA programs at the Grants.gov Web site: *http://www.grants.gov*. The closing date will be the same as for the paper submissions noted in this announcement. For applicants filing through Grants.gov, NOAA strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. Registration may take up to 10 business days.

Proposals must include elements requested in the full Federal Funding Opportunity announcement on the grants.gov portal. If a hard copy application is submitted, NOAA requests that the original and two unbound copies of the proposal be included. Proposals, electronic or paper, should be no more than 75 pages (numbered) in length, excluding budget, investigators, vitae, and all appendices. Federally mandated forms are not included within the page count. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Authority: 15 U.S.C. 313, 15 U.S.C. 1540; 15 U.S.C. 2901 *et seq.*, 16 U.S.C. 753a, 33 U.S.C. 1442, Stat. 71 (January 23, 2004).

(Catalog of Federal Domestic Assistance: 11.432, Office of Oceanic and Atmospheric Research (OAR) Joint and Cooperative Institutes)

Eligibility: Eligibility is limited to non-Federal public and private non-profit universities, colleges and research institutions that offer accredited graduate level degree-granting programs in NOAA-related sciences. The lead institution applying for the award and where the CI will be established must also satisfy the daily commuting distance requirement.

Cost Sharing Requirements: To stress the collaborative nature and investment of a CI by both NOAA and the research institution, cost sharing is required. There is no minimum cost sharing requirement; however, the amount of cost sharing will be considered when determining the level of the CI's commitment under NOAA's standard evaluation criteria for overall qualifications of applicants. Acceptable cost-sharing proposals include, but are not limited to, offering a reduced indirect cost rate against activities in one or more Tasks, waiver of any indirect costs assessed by the awardee on subawards, waiver of indirect costs assessed against base funds and/or Task I activities, waiver or reduction of any costs associated with the use of facilities at the CI, and full or partial salary funding for the CI director, administrative staff, graduate students,

visiting scientists, or postdoctoral scientists.

Evaluation Criteria and Review and Selection Procedures: The general evaluation criteria and selection factors that apply to full applications to this funding opportunity are summarized below. The evaluation criteria for full applications will have different weights and details. Further information about the evaluation criteria and selection factors can be found in the official full Federal Funding Opportunity announcement which is only available through the Grants.gov Web site (*http://www.grants.gov*).

Evaluation Criteria for Projects: Proposals will be evaluated using the standard NOAA evaluation criteria. Various questions under each criterion are provided to ensure that the applicant includes information that NOAA will consider important during the evaluation, in addition to any other information provided by the applicant.

1. *Importance and/or relevance and applicability of proposed project to the program goals (25 percent):* This criterion ascertains whether there is intrinsic value in the proposed work and/or relevance to NOAA, Federal, regional, state, or local activities.

- Does the proposal include research goals and projects that address the critical issues identified in NOAA's 5-year Research Plan, NOAA's Strategic Plan, and program priorities (*see* Section I.B. of the full funding opportunity announcement)?
- Is there a demonstrated commitment (in terms of resources and facilities) to enhance existing NOAA and CI resources to foster a long-term collaborative research environment/culture?
- Is there a strong education program with established graduate degree programs in NOAA-related sciences that also encourage student participation in NOAA-related research studies?

2. *Technical/scientific merit (30 percent):* This criterion assesses whether the approach is technically sound and/or innovative, if the methods are appropriate, and whether there are clear project goals and objectives.

- Does the project description include a summary of clearly stated goals to be achieved during the five year period that reflect NOAA's strategic plan and goals?
- Does the CI involve partnerships with other universities or research institutions, including Minority Serving Institutions and universities that can contribute to the proposed activities of the CI?

3. *Overall qualifications of applicants (30 percent):* This criterion ascertains whether the applicant possesses the necessary education, experience, training, facilities, and administrative resources to accomplish the project.

- If the institution(s) and/or principal investigators have received current or recent NOAA funding, is there a demonstrated record of outstanding performance working with NOAA and/or NOAA scientists on research projects?
- Is there nationally and/or internationally recognized expertise within the appropriate disciplines needed to conduct the collaborative/interdisciplinary research described in the proposal?
- Is there a well-developed business plan that includes fiscal and human resource management, as well as strategic planning and accountability?
- Are there any unique capabilities in a mission-critical area of research for NOAA?
- Has the applicant shown a substantial investment to the NOAA partnership, as demonstrated by the amount of the cost sharing contribution?

4. *Project costs (5 percent):* The budget is evaluated to determine if it is realistic and commensurate with the project needs and time-frame.

5. *Outreach and education (10 percent):* NOAA assesses whether this project provides a focused and effective education and outreach strategy regarding NOAA's mission to protect the Nation's natural resources.

Review and Selection Process: An initial administrative review/screening is conducted to determine compliance with requirements/completeness. All proposals will be evaluated and individually ranked in accordance with the assigned weights of the above-listed evaluation criteria by an independent peer review panel. At least three experts, who may be Federal or non-Federal, will be used in this process. If non-Federal experts participate in the review process, each expert will submit an individual review and there will be no consensus opinion. The merit reviewers' ratings are used to produce a rank order of the proposals. The Selecting Official selects proposals after considering the peer reviews and selection factors listed below. In making the final selections, the Selecting Official will award in rank order unless the proposal is justified to be selected out of rank order based upon one or more of the selection factors. The Selecting Official makes the final award recommendation to the Grants Officer authorized to obligate funds.

Selection Factors: The merit review ratings shall provide a rank order to the Selecting Official for final funding recommendations. The Selecting Official shall award in the rank order unless the proposal is justified to be selected out of rank order based upon one or more of the following factors:

1. Availability of funding.
2. Balance/distribution of funds:
(a) Geographically
(b) By type of institutions
(c) By type of partners
(d) By research areas
(e) By project types
3. Whether this project duplicates other projects funded or considered for funding by NOAA or other Federal agencies.
4. Program priorities and policy factors.
5. Applicant's prior award performance.
6. Partnerships and/or participation of targeted groups.
7. Adequacy of information necessary for NOAA staff to make a National Environmental Policy Act (NEPA) determination and draft necessary documentation before recommendations for funding are made to the Grants Officer.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Limitation of Liability: In no event will NOAA or the Department of Commerce be responsible for proposal preparation costs if these programs fail to receive funding or are cancelled because of other agency priorities. Publication of this announcement does not oblige NOAA to award any specific project or to obligate any available funds.

National Environmental Policy Act (NEPA): National Environmental Policy Act (NEPA). NOAA must analyze the potential environmental impacts, as required by NEPA, for applicant projects or proposals which are seeking NOAA federal funding opportunities. Detailed information on NOAA compliance with NEPA can be found at the NOAA NEPA Web site, *http://www.nepa.noaa.gov*, including our NOAA Administrative Order 216–6 for NEPA, *http://www.corporateservices.noaa.gov/%7Eames/NAOs/Chap_216/naos_216_6.html*, and the Council on Environmental Quality implementation regulations, *http://www.nepa.gov/nepa/regs/ceq/toc_ceq.htm*. Consequently, as part of an applicant's package, and under their description of their program activities, applicants are required to provide detailed information on the activities to be conducted, locations, sites, species and habitat to be affected, possible construction activities, and any

environmental concerns that may exist (e.g., the use and disposal of hazardous or toxic chemicals, introduction of non-indigenous species, impacts to endangered and threatened species, aquaculture projects, and impacts to coral reef systems). In addition to providing specific information that will serve as the basis for any required impact analyses, applicants may also be requested to assist NOAA in drafting of an environmental assessment, if NOAA determines an assessment is required.

Applicants will also be required to cooperate with NOAA in identifying feasible measures to reduce or avoid any identified adverse environmental impacts of their proposal. The failure to do so shall be grounds for not selecting an application. In some cases if additional information is required after an application is selected, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable NOAA to make an assessment on any impacts that a project may have on the environment.

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements: The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of February 11, 2008 (73 FR 7696), are applicable to this solicitation.

Paperwork Reduction Act: This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, and SF–LLL has been approved by the Office of Management and Budget (OMB) under the respective control numbers 4040–004, 4040–006, 0348–0040, and 0348–0046. Notwithstanding any other provision of law, no person is required to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

Executive Order 13132 (Federalism): It has been determined that this notice does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

Administrative Procedure Act/ Regulatory Flexibility Act: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements for the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared.

Dated: November 6, 2009.

Mark E. Brown,

Chief Financial Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. E9–27332 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XS82

Endangered Species; File No. 14634

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Douglas Peterson, Ph.D., Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, GA 30602, has been issued a permit to take shortnose sturgeon (Acipenser brevirostrum) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 263 13th Ave South, St. Petersburg, FL 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Malcolm Mohead or Jennifer Skidmore, (301)713–2289.

SUPPLEMENTARY INFORMATION: On October 8, 2009, notice was published in the **Federal Register** (74 FR 51836) that a request for a scientific research permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The purpose of the proposed research is to maintain and conduct research on 95 hatchery-reared shortnose sturgeon at the University of Georgia to meet the following objectives: (1) quantify differences in the environmental tolerances of northern versus southern range shortnose sturgeon, and (2) evaluate ontogenetic changes in the environmental tolerances of juvenile shortnose sturgeon. The fish will be obtained from the Warm Springs National Fish Hatchery and Regional Fisheries Center (USFWS), Warm Springs, Georgia 31830, under NMFS Permit 1604. Using a series of replicated laboratory (lethal and non-lethal) experiments, the researcher will evaluate the individual, additive, and interactive effects of the three habitat variables most critical in determining summer habitat quality for both juveniles and adult shortnose sturgeon: maximum water temperature, maximum salinity, and minimum concentration of dissolved oxygen. Researchers will also examine how environmental tolerances of shortnose sturgeon change with age and conditioning (chronic exposure). Future scientific research with these fish will involve studies of nutrition, tagging, physiology, environmental tolerance, contaminants, fish health, behavioral, tagging, genetics, and fish culture techniques. The permit does not authorize any takes from the wild, nor does it authorize any release of captive sturgeon into the wild.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of such endangered or threatened species, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 6, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–27315 Filed 11–12–09; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Request for Comment on a Petition To Exempt Certain Over-the-Counter Agricultural Swaps From Certain of the Requirements Imposed by Commission Regulation 35.2, Pursuant to Section 4(c) of the Commodity Exchange Act

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of request for comment.

SUMMARY: The Commodity Futures Trading Commission (Commission) is requesting comment on whether to exempt certain over-the-counter (OTC) swaps from certain of the requirements otherwise imposed by Commission Regulation 35.2. Specifically, the Kansas City Board of Trade (KCBT), a designated contract market, and the Kansas City Board of Trade Clearing Corporation (KCBTCC), a registered derivatives clearing organization (DCO), have petitioned for an exemption permitting them to list for clearing and to clear, respectively, wheat calendar swaps. Authority for granting such an exemption is found in Section 4(c) of the Commodity Exchange Act (CEA).

DATES: Comments must be received on or before December 14, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov/http://frwebgate.access.gpo/cgi-bin/leaving.* Follow the instructions for submitting comments.
- *E-mail: secretary@cftc.gov.* Include ''KCBT/KCBTCC Section 4(c) Petition'' in the subject line of the message.
- *Fax:* 202–418–5521.
- *Mail:* Send to David A. Stawick, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Courier:* Same as mail above.

All comments received will be posted without change to *http://www.CFTC.gov/.*

FOR FURTHER INFORMATION CONTACT: Phyllis P. Dietz, Associate Director, 202–418–5449, *pdietz@cftc.gov,* or Eileen A. Donovan, Special Counsel, 202–418–5096, *edonovan@cftc.gov,* Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. The KCBT/KCBTCC Petition

KCBT and KCBTCC (Petitioners) jointly submitted a request to the Commission for an exemptive order under Section 4(c) of the CEA.[1] The order would permit KCBT to list certain wheat calendar swaps for ''clearing only'' and permit KCBTCC to clear those wheat calendar swaps (cleared-only contracts).[2] The contract size (5,000 bushels), position limits (5,000 contracts for any single month and 6,500 contracts for all months combined), and minimum price fluctuations ($.0025) of the cleared-only contracts would be the same as those of the KCBT wheat futures contract. However, the cleared-only contracts would be cash-settled, in contrast to KCBT's wheat futures contract, which is physically-settled, and would be listed for any of the 12 calendar months, as compared to the wheat futures contract which is listed only for March, May, July, September, and December.

The OTC wheat calendar swaps would be negotiated between eligible swap participants in the OTC market and then cleared by clearing members acting on behalf of their own customers or the customers of non-clearing member FCMs or non-member FCMs. Previous requests to clear OTC agricultural swaps were limited to clearing member FCMs acting on behalf of their own customers.[3]

In support of their request, Petitioners represent that daily large trader reporting information allows KCBT to monitor for position concentration among non-clearing member and non-member FCMs, and the risk management and financial surveillance procedures of the non-clearing member and non-member FCMs' designated self-regulatory organizations (DSROs) are similar or identical to those employed by KCBT. The Commission requests comment on the impact of permitting the OTC wheat calendar swaps to be cleared by clearing FCMs on behalf of the customers of non-clearing member FCMs or non-member FCMs, and whether there are any conditions that should be placed upon DSROs or FCMs to facilitate risk management in connection with such transactions in the cleared-only contracts.

Part 35 of the Commission's regulations[4] exempts swap agreements and eligible persons entering into such agreements from most provisions of the CEA.[5] The term ''swap agreement'' is defined to include, among other types of agreements, a ''commodity swap.''[6] Part 35 was promulgated pursuant to authority conferred upon the Commission in Section 4(c) of the CEA to exempt certain transactions in order to promote innovation and competition.[7] Various exemptions and exclusions were subsequently added to the CEA by the Commodity Futures Modernization Act of 2000 (CFMA),[8] but none apply to agricultural contracts.[9]

Part 35 requires, among other things, that a swap agreement not be part of a fungible class of agreements that are standardized as to their material economic terms[10] and that the creditworthiness of any party having an interest under the agreement be a material consideration in entering into or negotiating the terms of the agreement.[11] Under the arrangement proposed by Petitioners, a cleared-only contract could be offset by another cleared-only contract. Thus, clearing of the OTC wheat calendar swaps would result in contracts that are fungible with other cleared-only contracts with equivalent terms. In addition, the creditworthiness of the counterparty would not be a consideration. Accordingly, the OTC swaps KCBTCC would clear would not satisfy all of the conditions of Part 35.[12]

[1] A copy of the petition is available on the Commission's Web site at *http://www.cftc.gov.*

[2] The Petitioners also requested that the Commission issue an order under Section 4d of the CEA that would permit KCBTCC and futures commission merchants (FCMs) to commingle customer funds used to margin, secure, or guarantee the cleared-only contracts with other funds held in segregated accounts. Although the CEA does not require the Commission to provide public ''notice and opportunity for hearing'' in connection with the issuance of a 4d order (as is required for an order requested under Section 4(c)), public comments regarding the Petitioners' request for a 4d order are being accepted on the Commission's Web site.

[3] *See* 74 FR 12316 (Mar. 24, 2009) (order permitting clearing of corn, wheat, and soybean swaps by the Chicago Mercantile Exchange); 73 FR 77015 (Dec. 18, 2008) (order permitting clearing of coffee, sugar, and cocoa swaps by ICE Clear U.S.).

[4] 17 CFR Part 35 (Commission regulations are hereinafter cited as ''Reg. ___'').

[5] Jurisdiction is retained for, among other things, provisions of the CEA proscribing fraud and manipulation. *See* Reg. 35.2.

[6] Reg. 35.1(b)(1)(i). ''Commodity'' is defined in Section 1a(4) of the CEA to include a variety of specified agricultural products, ''and all other goods and articles, except onions * * * and all services, rights, and interests in which contracts for future delivery are presently or in the future dealt in.''

[7] *See* 58 FR 5587 (Jan. 22, 1993).

[8] Public Law 106–554, 114 Stat. 2763 (2000).

[9] *See, e.g.,* Sections 2(d), (g), and (h) of the CEA, 7 U.S.C. 2(d), (g), and (h).

[10] Reg. 35.2(b).

[11] Reg. 35.2(c).

[12] The contracts that the KCBT proposes to list for clearing-only would, however, meet the requirements of paragraphs (a) and (d) of Reg. 35.2 in that they would be entered into solely between eligible swap participants and executed OTC.

However, Part 35 further permits ''any person [to] apply to the Commission for exemption from any of the provisions of the Act * * * for other arrangements or facilities.'' [13] Petitioners have requested that the Commission grant an order under Section 4(c) of the CEA that would exempt cleared-only contracts to the same extent as contracts that are exempt pursuant to Part 35 of the Commission's regulations.

II. Section 4(c) of the Commodity Exchange Act

Section 4(c)(1) of the CEA empowers the Commission to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions from any of the provisions of the CEA (subject to exceptions not relevant here) where the Commission determines that the exemption would be consistent with the public interest.[14] The Commission may grant such an exemption by rule, regulation, or order, after notice and opportunity for hearing, and may do so on application of any person or on its own initiative.

In enacting Section 4(c), Congress noted that the goal of the provision ''is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.'' [15] The Petitioners represent that permitting the clearing of the OTC wheat calendar swaps by KCBTCC may benefit the marketplace by providing market participants the ability to combine flexible negotiation with central counterparty guarantees and capital efficiencies. In addition, Petitioners represent that they expect the cleared-only contracts to provide a risk management tool with unique attributes, *i.e.,* contract months and settlement features, to address price risk and to complement KCBT's wheat futures and options contracts.

Section 4(c)(2) provides that the Commission may grant an exemption only when it determines that the requirements for which the exemption is being provided should not be applied to the agreements, contracts, or transactions at issue, and the exemption is consistent with the public interest and the purposes of the CEA; that the agreements, contracts, or transactions will be entered into solely between appropriate persons; and that the exemption will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory responsibilities under the CEA.[16] Thus, the Commission is requesting comment on whether it should exempt the OTC wheat calendar swaps that are proposed to be cleared by KCBTCC and listed by KCBT, as described above, to the same extent as other contracts that are exempt pursuant to Part 35 of the Commission's regulations.

The purposes of the CEA include ''promot[ing] responsible innovation and fair competition among boards of trade, other markets, and market participants.'' [17] It may be consistent with these and the other purposes of the CEA, and with the public interest, for the cleared-only contracts described herein to be exempt as are other contracts under Part 35 of the Commission's regulations. However, the exception of agricultural commodities from the exemptions and exclusions provided under the CFMA for OTC transactions may be relevant to the analysis. Accordingly, the Commission is requesting comment as to whether an exemption from the requirements of the CEA should be granted in the context of these transactions.

In light of the above, the Commission also is requesting comment as to whether this exemption would affect its ability to discharge its regulatory responsibilities under the CEA, or with the self-regulatory duties of any designated contract market.

III. Request for Comment

The Commission requests comment on all aspects of the issues presented by Petitioners' exemption request.

IV. Related Matters

A. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [18] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. An exemptive order issued by the Commission would not be associated with a collection of information. Accordingly, the PRA does not apply.

B. Cost-Benefit Analysis

Section 15(a) of the CEA [19] requires the Commission to consider the costs and benefits of its action before issuing an order under the CEA. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of an order or to determine whether the benefits of the order outweigh its costs. Rather, Section 15(a) simply requires the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) of the CEA further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular order was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

[13] Reg. 35.2(d).

[14] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1), provides in full that:

In order to promote responsible economic or financial innovation and fair competition, the Commission by rule, regulation, or order, after notice and opportunity for hearing, may (on its own initiative or on application of any person, including any board of trade designated or registered as a contract market or derivatives transaction execution facility for transactions for future delivery in any commodity under section 7 of this title) exempt any agreement, contract, or transaction (or class thereof) that is otherwise subject to subsection (a) of this section (including any person or class of persons offering, entering into, rendering advice or rendering other services with respect to, the agreement, contract, or transaction), either unconditionally or on stated terms or conditions or for stated periods and either retroactively or prospectively, or both, from any of the requirements of subsection (a) of this section, or from any other provision of this chapter (except subparagraphs (c)(ii) and (D) of section 2(a)(1) of this title, except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D) of this title), if the Commission determines that the exemption would be consistent with the public interest.

[15] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[16] Section 4(c)(2) of the CEA, 7 U.S.C. 6(c)(2), provides in full that:

The Commission shall not grant any exemption under paragraph (1) from any of the requirements of subsection (a) of this section unless the Commission determines that—

(A) the requirement should not be applied to the agreement, contract, or transaction for which the exemption is sought and that the exemption would be consistent with the public interest and the purposes of this Act; and

(B) the agreement, contract, or transaction—

(i) will be entered into solely between appropriate persons; and

(ii) will not have a material adverse effect on the ability of the Commission or any contract market or derivatives transaction execution facility to discharge its regulatory or self-regulatory duties under this Act.

[17] Section 3(b) of the CEA, 7 U.S.C. 5(b). *See also* Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1) (purpose of exemptions is ''to promote responsible economic or financial innovation and fair competition'').

[18] 44 U.S.C. 3501 *et seq.*

[19] 7 U.S.C. 19(a).

accomplish any of the purposes of the CEA.

The Commission is considering the costs and benefits of an exemptive order in light of the specific provisions of Section 15(a) of the CEA, as follows:

1. *Protection of market participants and the public.* The contracts that are the subject of the exemption request will only be entered into by persons who are ''appropriate persons'' as set forth in Section 4(c) of the CEA.

2. *Efficiency, competition, and financial integrity.* Extending the exemption granted under Part 35 to the OTC wheat calendar swaps to allow them to be cleared may promote liquidity and transparency in the markets for OTC wheat derivatives as well as wheat futures. Extending the exemption also may promote financial integrity by providing the benefits of clearing to the OTC wheat market.

3. *Price discovery.* Price discovery may be enhanced through market competition.

4. *Sound risk management practices.* Clearing of OTC transactions may foster risk management by the participant counterparties. KCBTCC's risk management practices in clearing these transactions would be subject to the Commission's supervision and oversight.

5. *Other public interest considerations.* The requested exemption may encourage market competition in an agricultural derivatives product without unnecessary regulatory burden.

After considering these factors, the Commission has determined to seek comment on the exemption request as discussed above. The Commission also invites public comment on its application of the cost-benefit provisions of Section 15.

Issued in Washington, DC, on November 6, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9–27287 Filed 11–12–09; 8:45 am]

BILLING CODE P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2009–0093]

Proposed Extension of Approval of Information Collection; Comment Request—Consumer Opinion Forum

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC or Commission) requests comments on a proposed extension of approval of a collection of information from persons who may voluntarily register and participate in a Consumer Opinion Forum posted on the CPSC Web site, *http://www.cpsc.gov.* The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than January 12, 2010.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2009–0093, by any of the following methods:

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments. To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information call or write Linda L. Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; *telephone:* (301) 504–7671 or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

The Commission is authorized under section 5(a) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2054(a), to conduct studies and investigations relating to the causes and prevention of deaths, accidents, injuries, illnesses, other health impairments, and economic losses associated with consumer products. Section 5(b) of the CPSA, 15 U.S.C. 2054(b), further provides that the Commission may conduct research, studies and investigations on the safety of consumer products or test consumer products and develop product safety test methods and testing devices.

In order to better identify and evaluate the risks of product-related incidents, the Commission staff seeks to solicit consumer opinions and perceptions related to consumer product use, on a voluntary basis, through questions posted on the CPSC's Consumer Opinion Forum. Through the forum, consumers will be able to answer questions and provide information regarding their experiences, opinions and/or perceptions on the use or pattern of use of a specific product or type of product. The Consumer Opinion Forum is intended for consumers, 18 years and older, who have access to the Internet and e-mail, who voluntarily register to participate through a participant registration process, and respond to the questions posted in the Consumer Opinion Forum. A link to the Consumer Opinion Forum login page is available on the CPSC Web site, *http://www.cpsc.gov.* Consumers may link directly to the login page for the Consumer Opinion Forum at *https://www.cpsc.gov/cgibin/cof/login.aspx.* When new questions are posted on the CPSC Web site, registered participants will be invited via e-mail to respond to various questions, but not more frequently than once every four weeks.

The information collected from the Consumer Opinion Forum will help inform the Commission's evaluation of consumer products and product use by providing insight and information into consumer perceptions and usage patterns. Such information may also assist the Commission in its efforts to support voluntary standards activities, and help the staff identify areas regarding consumer safety issues that need additional research. In addition, based on the information obtained, the staff may be able to provide safety information to the public that is easier to read and is more easily understood by a wider range of consumers. For example, the staff may be able to propose new language or revisions to existing language in warning labels or

manuals if the staff finds that certain warning language is perceived by many participants to be unclear or subject to misinterpretation. Finally, the Consumer Opinion Forum may be used to solicit consumer opinions and feedback regarding the effectiveness of product recall communications and in determining what action is being taken by consumers in response to such communications and why. This may aid in tailoring future recall activities to increase the success of those activities. If this information is not collected, the Commission would not have available useful information regarding consumer experiences, opinions, and perceptions related to specific product use, which the Commission relies on in its ongoing efforts to improve the safety of consumer products on behalf of consumers.

B. Estimated Burden

During the past two years, 2,300 individuals have registered to participate in the Consumer Opinion Forum. Although the registration is still open, the Commission staff does not expect the number of registrants will exceed 5,000 over the next few years. The Commission staff estimates that each respondent will take 10 minutes or less to complete the one-time registration process. Based on that estimate, the registration burden is estimated to have been approximately 192 burden hours per year for 2,300 registrants.

The Commission staff further estimates that the amount of time required to respond to each set of questions on the Consumer Opinion Forum will be 5 minutes or less. The Commission staff foresees the possibility of up to 4 surveys per year. If, at the maximum, each respondent responds to 4 sets of questions over the course of a year, the yearly burden would result in approximately 20 minutes per year for each respondent. Based on an estimated 44 percent response rate for 2,300 potential respondents, the annual burden could total 337 hours. If as many as 5,000 registrants respond, the Commission staff estimates that the annual burden could total approximately 733 hours per year (44 percent response rate for 5,000 potential respondents at 5 minutes per survey for four surveys).

The Commission staff estimates that the total estimated burden for new registrations and surveys, combined, will not exceed 925 hours annually (no more than 733 hours for four surveys per year, plus no more than 192 hours for new registrations). The Commission staff estimated the value of the time of respondents to this collection of information at $29.39 an hour. This is based on the 2009 U.S. Department of Labor Employer Costs for Employee Compensation. At this valuation, the estimated annual cost to the public of this information collection will be about $27,000 per year.

The Commission will expend approximately 1 month of professional staff time annually for preparing questions and analysis of responses for each survey. Assuming that 4 surveys will be conducted annually, (and 4 staff months) the total annual cost to the Federal government of the collection of information is estimated to be $55,360.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: November 9, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–27326 Filed 11–12–09; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. CPSC–2009–0095]

Notice of Workshop on Product Testing

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (CPSC, Commission, we) is announcing a two-day workshop to discuss issues relating to the testing, certification, and labeling of certain consumer products pursuant to section 14 of the Consumer Product Safety Act. We invite interested parties to participate in or attend the meeting and to submit comments. The workshop will be held in Bethesda, Maryland on December 10 through 11, 2009.

DATES: The workshop will be held from 9:30 a.m. to 4 p.m. on Thursday, December 10, 2009, and Friday, December 11, 2009.

Comments must be received by January 11, 2010.

ADDRESSES: The workshop will be held at CPSC's headquarters building at 4330 East West Highway, Bethesda, Maryland 20814, 4th Floor Hearing Room. There is no charge to attend the workshop. Persons interested in attending the workshop must register online at *http://www.cpsc.gov* and click on the link titled, ''CPSC Staff Workshop: Product Testing'' under the ''What's Hot'' portion of the website near the bottom of the CPSC's home page. This link also has more information about the workshop.

You may submit comments, identified by Docket No. CPSC–2009–0095, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

To ensure timely processing of comments, the Commission is no longer accepting comments submitted by electronic mail (e-mail) except through *http://www.regulations.gov.*

Written Submissions

Submit written submissions in the following way:

Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions), preferably in five copies, to: Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7923.

Instructions: All submissions received must include the agency name and docket number for this notice. All comments received may be posted without change, including any personal identifiers, contact information, or other personal information provided, to *http://www.regulations.gov.* Do not submit confidential business information, trade secret information, or other sensitive or protected information electronically. Such information should be submitted in writing.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Robert J. Howell, Office of Hazard Identification and Reduction, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814; telephone (301) 504–7577 or *e-mail: rhowell@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

I. What Does the Law Require?

Section 14(a)(1) of the Consumer Product Safety Act (CPSA) (15 U.S.C. 2063(a)(2)), as amended by the Consumer Product Safety Improvement Act of 2008 (CPSIA), establishes requirements for the testing and certification of products subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other Act enforced by the Commission and which are imported for consumption or warehousing or distributed in commerce. Under section 14(a)(1)(A) of the CPSA, manufacturers and private labelers must issue a certificate which ''shall certify, based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product under the CPSA or any other Act enforced by the Commission.'' CPSC regulations, at 16 CFR part 1110, further define the certificate requirement as applying only to importers and domestic manufacturers. Section 14(a)(1)(B) of the CPSA further requires that the certificate provided by the importer or domestic manufacturer ''specify each such rule, ban, standard, or regulation applicable to the product.'' The certificate described in section 14(a)(1) of the CPSA is known as a General Conformity Certification.

Section 14(a)(2) of the CPSA (15 U.S.C. 2063(a)(2)) establishes testing requirements for children's products that are subject to a children's product safety rule. (Section 3(a)(2) of the CPSA (15 U.S.C. 2052(a)(2)) defines a children's product as a consumer product designed or intended primarily for children 12 and younger.) Section 14(a)(2)(A) of the CPSA also states that, before a children's product that is subject to a children's product safety rule is imported for consumption or warehousing or distributed in commerce, the manufacturer or private labeler of such children's product must submit sufficient samples of the children's product ''or samples that are identical in all material respects to the product'' to an accredited ''third party conformity assessment body'' to be tested for compliance with the children's product safety rule. Based on such testing, the manufacturer or private labeler, under section 14(a)(2)(B) of the CPSA, must issue a certificate that certifies that such children's product complied with the children's product safety rule based on the assessment of a third party conformity assessment body accredited to perform such tests.

Section 14(d)(2)(A) of the CPSA requires the Commission to initiate a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements. This provision applies to all consumer products that are subject to a product safety rule administered by the Commission.

Section 14(d)(2)(B) of the CPSA requires the Commission to establish protocols and standards for:

- Ensuring that a children's product tested for compliance with a children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts;
- Testing of random samples;
- Verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules; and
- Safeguarding against the exercise of undue influence on a third party conformity assessment body by a manufacturer or private labeler.

II. What Is the CPSC Considering With Regard to Testing and Certification?

Although section 14 of the CPSA appears to impose the same testing and certification requirements for consumer products and for children's products, there are significant differences between consumer products, children's products, manufacturers, and even testing methods and sampling methods. These differences make it difficult to devise a regulatory approach that is:

- General enough to apply to most, if not all, consumer products subject to section 14 of the CPSA;
- Detailed enough so that interested parties know what tests need to be performed, how often those tests need to be performed, and how many samples need to be tested;
- Rigorous enough so that the test results provide confidence that all (rather than most or some) consumer products comply with consumer product safety rules; and
- Sensitive enough to the needs of small businesses and individuals, such that any regulatory program designed to implement section 14 of the CPSA does not prove so costly or so burdensome as to drive those small businesses and individuals out of business regardless of the quality or safety of the products they make.

For example, one can imagine that the testing requirements that apply to a manufacturer who makes tens of thousands of electronic toys that will be sold at retail outlets throughout the world will and should differ from the testing requirements that apply to an individual who hand-carves ten wooden toys and sells them at local craft shows. Nevertheless, under section 14 of the CPSA, the electronic toys and wooden toys both may fit the definition of ''children's product'' and be subject to testing by a third party conformity assessment body. Similarly, one can imagine that a large manufacturer has the financial and technical resources and sophistication to devise testing programs and to source its products to ensure that the product and the components used to make the product comply with consumer product safety rules, whereas an individual might not. Nevertheless, under section 14 of the CPSA, both the large manufacturer and the individual must test and certify their products and must specify each such rule, ban, standard, or regulation applicable to the product.

The Commission, therefore, will conduct a two-day workshop to discuss possible options for implementing section 14 of the CPSA. We believe that a properly structured testing program will greatly reduce the likelihood of unsafe or otherwise non-compliant products entering the market. A properly structured testing and certification program also may result in fewer product recalls and CPSC enforcement actions, increased consumer confidence, and safer consumer products.

III. What Topics Will Be Addressed at the Workshop?

In general, the workshop will focus on the following topics:

- Reasonable Testing Programs;
- Additional Third-Party Testing Requirements for Children's Products;
- Issues Affecting Importers and Small Businesses;
- The Consumer Product Labeling Program; and
- Certification.

We address these topics in greater detail in parts III.A through III.E of this document.

A. Reasonable Testing Programs

1. What Is a ''Reasonable Testing Program?''

As explained in part I of this document, section 14(a)(1)(A) of the

CPSA requires manufacturers and private labelers of a product which is subject to a consumer product safety rule under the CPSA or similar rule, ban, standard, or regulation under any other Act enforced by the Commission to issue a certificate that is based on a test of each product or upon a reasonable testing program. Section 14(a)(1)(A) of the CPSA, however, begins with the phrase ''except as provided by'' section 14(a)(2) and (a)(3) of the CPSA. (Section 14(a)(2) of the CPSA pertains to third party testing of children's products while section 14(a)(3) of the CPSA establishes a schedule for third party testing.) While one might interpret the ''except for'' clause in section 14(a)(1) of the CPSA as not extending the ''reasonable testing program'' requirement to children's products, section 14(b) of the CPSA authorizes the Commission to prescribe reasonable testing programs for any product subject to a consumer product safety rule under the CPSA or a similar rule, regulation, standard, or ban under any other Act enforced by the Commission and for which a certificate is required under section 14(a) of the CPSA. Thus, because children's products are subject to a certificate requirement under section 14(a) of the CPSA, the Commission, by regulation, may prescribe a reasonable testing program for children's products.

We envision a reasonable testing program as having five elements regardless of the quantity of product manufactured or the size of the importer or manufacturer. The five elements are:

- Product specifications that describe the consumer product and list the safety rules, standards, etc., with which the product must comply. The product specification should include a complete description of the product and any other information, including, but not limited to, a bill of materials, parts listing, raw material selection and sourcing, and/or model names or numbers of items necessary to describe the product and differentiate it from other products.
- Certification tests which are performed on samples of the manufacturer's consumer product to demonstrate that the product is capable of passing the tests prescribed by the standard.
- A production testing plan which describes the tests that must be performed and the testing intervals to provide reasonable assurance that the products as produced meet all applicable safety rules.
- A remedial action plan which must be employed whenever samples of the consumer product or results from any other tests used to assess compliance yield unacceptable or failing test results.
- Documentation of the reasonable testing program and how it was implemented.

These essential elements are intended to promote the use or consideration of proper product design and material specifications, adequate production and quality control processes, effective remedial action process, and proper records maintenance procedures to assure, with reasonable certainty, that all products entered into commerce comply with all safety rules, standards, bans, or regulations. Some elements may be procedural or process-control oriented. Some elements may involve reliance on test data from material or component suppliers, and some elements may be based on third party testing validation.

2. What Are the Issues Regarding a Reasonable Testing Program?

We invite discussion and comment on the following issues pertaining to a ''reasonable testing program:''

- Certain CPSC regulations, such as 16 CFR 1203.33(b) (describing characteristics of a ''reasonable testing program'' for testing bicycle helmets) include product specifications, certification testing, production testing, and corrective action as elements of a ''reasonable testing program.'' However, those other CPSC regulations tend to be specific to a single product type and affect a limited number of manufacturers. In part III.A.1 of this document, we described the five elements we believe should constitute a ''reasonable testing program'' for all manufacturers. Please discuss whether the five elements are appropriate for all manufacturers and whether additional requirements or modifications should be made. For example, we have heard about one testing program that evaluates hazards and risk assessment when the product is being designed; this step would occur before any testing is conducted, so one might consider whether additional requirements should be part of a reasonable testing program or modifications to the CPSC's five elements. Please identify any references, standards, and other regulatory approaches that may be helpful.
- What factors should be considered to determine a reasonable frequency for production testing? For example, should the frequency for testing product samples be determined by production volume, the amount of time that has elapsed since the product was last tested, or some combination of those two and/or other factors? How should the testing frequency be determined for very low volumes or seasonal production? What rationale should be used to determine the frequency of production testing? What references, standards, or models exist?
  - Should the potential hazard (either the severity or the probability of occurrence) be considered in determining how frequently the testing is conducted? For example, should a product subject to a consumer product safety rule, where the potential hazard is death, be tested more frequently than a product where the potential hazard is some lesser degree of harm? If so, how might a rule incorporate potential hazard into testing frequency?
- How should a reasonable testing program requirement address the number of samples to be tested? Production volumes can vary tremendously among manufacturers; one manufacturer might make hundreds of thousands of the same item, whereas an individual who hand-weaves or carves a product might make only one item. Please identify any references, standards, and other regulatory approaches that may be helpful.
- How might component or batch testing be incorporated into a ''reasonable testing program?'' What circumstances would warrant new component or batch testing?
  - Under what circumstances should component testing be permitted or not permitted?
  - Are there particular types of component testing which should or should not be permitted?
  - What are the potential problems in or obstacles to using component testing?
- Section 19(a)(6) of the CPSA makes it unlawful for any person to fail to furnish a certificate required by the CPSA or any other act enforced by the Commission or to issue a false certificate if such person ''in the exercise of due care has reason to know that the certificate is false or misleading in any material respect * * *.'' If, under a reasonable testing program, a manufacturer may rely on certificates provided by a component supplier, what criteria or factors should we consider in determining whether a manufacturer has exercised ''due care?'' How might a reasonable testing program's results apply in determining whether a certificate is false or misleading?
- What problems (if any) will small manufacturers or manufacturers of low volume products encounter in establishing a reasonable testing program as described in part III.A.1 of this document? To what extent do small businesses or manufacturers of low volume products already have

procedures in place that are intended to ensure that their products meet the applicable product safety rules?

• What quality assurance procedures do manufacturers use now that might overlap with the reasonable testing program envisioned here?

B. What Are the Issues Regarding Additional Third-Party Testing Requirements for Children's Products?

Section 14(d)(2)(B)(i) of the CPSA requires the Commission to establish protocols and standards for ensuring that a children's product tested for compliance with a children's product safety rule is subject to testing periodically and when there has been a material change in the product's design or manufacturing process, including the sourcing of component parts.

• Should the potential hazard (either the severity or the probability of occurrence) be considered in determining how frequently the periodic testing is conducted? For example, should a product subject to a consumer product safety rule, where the potential hazard is death, be tested more frequently than a product where the potential hazard is some lesser degree of harm? If so, how might a rule incorporate potential hazard into testing frequency?

• What changes should constitute a ''material change'' in a product's design or manufacturing process? Are there criteria by which one might determine whether a change is a ''material'' change? For example, a material change in a product's design or manufacturing process could be described as a change that affects the product's ability to comply with a consumer product safety rule. However, as a practical matter, it may be difficult to determine what consumer product safety rules apply to the product and the extent to which compliance with those rules is affected by a change.

• Under what circumstances or conditions might the testing be limited to the change itself? For example, assume that a product is painted using paint made by Paint Company A, but then the product manufacturer changes to use paint made by Paint Company B. Would it be acceptable to test only the paint made by Paint Company B, under section 14(d)(2)(B)(i) of the CPSA, rather than test the entire product?

• Section 14(d)(2)(B)(ii) of the CPSA refers to the ''testing of random samples to ensure continued compliance.'' What constitutes a ''random sample?'' How should the sample be collected, and who should collect it? How should a regulation address the number of samples to be tested? Please identify any references, standards, and other regulatory approaches that may be helpful. For products that are arguably unique, such as hand-made or custom products, what would constitute a ''random sample?''

• Section 14(d)(2)(B)(iii) of the CPSA requires the Commission to establish protocols and standards for ''verifying that a children's product tested by a conformity assessment body complies with applicable children's product safety rules.'' What requirements or procedures are needed to verify compliance? Who conducts the verification process and how? For example, should verification be done by a different third party conformity assessment body and using the same tests that were applied to the children's product? How often should verification be conducted? Please identify any references, standards, and other regulatory approaches that may be helpful.

• Section 14(d)(2)(B)(iv) of the CPSA requires the Commission to establish protocols and standards for ''safeguarding against the exercise of undue influence'' on third party conformity assessment bodies.

○ What specific requirements should a rule specify to ensure that a third party conformity assessment body is safeguarded against undue influence by a manufacturer or private labeler?

○ What specific requirements should a rule establish to ensure that manufacturers and private labelers do not exercise or attempt to exercise undue influence on third party conformity assessment bodies?

Currently, the notices of requirements we have issued for the accreditation of third party conformity assessment bodies specify that ''firewalled'' conformity assessment bodies (which are third party conformity assessment bodies that are owned, managed, or controlled by a manufacturer or private labeler) must submit to the Commission copies, in English, of their training documents showing how employees are trained to notify the Commission immediately and confidentially of any attempt by the manufacturer, private labeler, or other interested party to hide or exert undue influence over the third party conformity assessment body's test results. We have heard recommendations to strengthen or increase the evidence needed to protect against the exercise of undue influence and to apply such recommendations to all third party conformity assessment bodies and perhaps to manufacturers and private labelers. For example, individual employees could sign documents acknowledging that they are aware of and/or have received training pertaining to safeguards against undue influence. Please identify any references, standards, and other regulatory approaches that may be helpful.

• What provisions (if any) should be made for small manufacturers and manufacturers with low production volumes and why? For example, specifying the frequency of periodic testing or the number of random samples to be tested may be inappropriate where the volume of children's products being manufactured is low or where the children's product is one-of-a-kind.

• Although the enforcement of most third party testing requirements of the CPSA has been stayed at least until February 10, 2010 (74 FR 6396 (February 9, 2009)), many manufacturers and importers have subjected their products to third party testing. We are interested in learning about:

○ The experiences of firms in obtaining third party testing, including information on the actual testing costs, and the experiences of small firms and crafters, especially those with no more than a few employees or with low volume products (*e.g.*, less than 10,000 units per year);

○ Testing costs and the possible impacts of required periodic testing on the financial health of the businesses;

○ The use of component testing to reduce the cost of testing or the potential for using component testing for lowering the cost of testing;

○ The circumstances under which component testing should or should not be permitted. For example, component testing may be appropriate for testing parts for lead and for phthalates, but inappropriate for testing pursuant to 16 CFR part 1203 (Safety Standard for Bicycle Helmets). As another example, one might argue that component testing may be appropriate for raw materials under certain circumstances, but that certain items should not be considered to be ''component'' and, therefore, are not appropriate for component testing. How might we define ''component?'' May the Consumer Product Safety Improvement Act of 2008 be read to require foreign manufacturers of components meant for children's products to issue certifications?;

○ Whether particular types of component testing should or should not be permitted. For example, assume that the product is a doll with painted eyes. If a manufacturer can develop a sample doll whose entire head is painted, using the same paint as used for the eyes, a testing laboratory would be able to

obtain a sufficient paint sample from a smaller number of sample dolls compared to the number of dolls that would need to be tested if the manufacturer's samples had to have the same sized painted eyes as the dolls to be sold on the market. As another example, assume that a product is assembled in pieces; if a manufacturer can test the pieces before assembling the product, a testing laboratory would not have to receive an assembled final product and then break the product down into pieces for testing; and

○ The potential problems in or obstacles to using component testing.

C. What Are the Issues Pertaining to Importers and Small Businesses?

We recognize that importers, small businesses, and others may operate in an environment that may differ significantly from that of large manufacturers. For example, importers may acquire their product from many sources, including manufacturing operations under their control and contract manufacturers or foreign wholesalers that are not under their control. If an importer is not directly involved in the manufacturing process, its ability to monitor and control the manufacturing process may be limited.

• How might an importer involved with a contract manufacturer ensure testing is conducted when the source of a component part changes? We seek information on approaches that will ensure that consumer products comply with consumer product safety rules and similar rules, bans, standards, or regulations under other acts enforced by the Commission while recognizing that importers and others may face constraints due to their lack of direct involvement in the manufacture and production of the consumer product.

• Many small businesses have expressed concerns about the implementation of section 14(a)(2) of the CPSA, particularly small businesses importing or manufacturing children's products which require testing by a third party conformity assessment body. While we do not have sufficient information regarding the size or production volume of all children's product manufacturers, the information that is available suggests that, in 2006, 98 percent of domestic firms manufacturing toys, dolls, and/or games employed fewer than 500 employees, and 81 percent employed fewer than 20 employees. (*See Employer Firms, & Employment by Employment Size of Firm by NAICS Codes, 2006* (North American Industry Classification System (NAICS) Code 33993 pertaining to the doll, toy, and game manufacturing industry), available on the Internet at *http://www.sba.gov/advo/research/us06_n6.pdf.*)

○ There will be an economic impact on all parties required to obtain third party testing of children's products. Those dealing with higher volumes may be able to amortize the testing costs over a larger volume of product, thereby reducing the incremental per-piece testing cost. However, requiring all businesses to abide by the same protocols and standards, regardless of their size or methods of production, may burden the smallest volume businesses with significant testing costs. We seek a better understanding of the potential cost impact on these smaller businesses and how a testing program pursuant to section 14(d)(2)(B) of the CPSA might be structured to minimize the cost burden while ensuring product safety.

○ Small businesses producing a very small volume of children's products, often custom-ordered, present unique challenges. These small businesses often buy small quantities of components at retail establishments. These components often are not children's products when sold at retail and therefore are not subject to the third party testing requirements. However, when the components are used to manufacture a children's product, they must meet all applicable standards. For example, a plain button sold at retail is not a children's product and is not subject to third party testing. If the same button is used to manufacture a toy, the button becomes a component of a children's product and becomes subject to the third party testing requirement and to children's product safety rules. We invite comment on possible approaches for product testing, including component testing, in these situations.

D. What Are the Issues Pertaining to a Consumer Product Labeling Program?

Section 14(d)(2)(A) of the CPSA requires the Commission to initiate, by regulation, a program by which a manufacturer or private labeler may label a consumer product as complying with the certification requirements in section 14(a) of the CPSA for consumer products and for children's products.

We believe that the party certifying the consumer product is responsible for ensuring that the product complies with all applicable consumer product safety rules or similar rules, bans, standards, or regulations under any other act enforced by the Commission and that only the party certifying the product's compliance, or its authorized representative, may affix the label to the consumer product. We also believe that the label should be affixed before the consumer product is placed on the market and should be affixed to the product packaging or, if there is no packaging, to the product or on a tag or other material included with the product.

• What requirements, if any, should be specified as part of the label program? For example, should a rule specify the label's text or provide other specifications such as size, color, font, and location? Should a rule impose any restrictions on the label's use? If so, what should the specifications or restrictions be?

• What challenges, if any, would a label program present to manufacturers, such as manufacturers of certain products or small manufacturers, and how could such challenges be addressed?

E. What Are the Issues Pertaining to Certification?

Section 14(g)(3) of the CPSA states that every certificate required under section 14 of the CPSA ''shall accompany'' the product or shipment of products covered by the same certificate and that a copy of the certificate shall be furnished to each distributor or retailer. Section 14(g)(4) of the CPSA allows for electronic filing of certificates up to 24 hours before arrival of an imported product and directs manufacturers and private labelers to furnish a copy to the Commission and to the Commissioner of Customs upon request.

• What constitutes or should constitute ''accompanying'' the product or shipment?

• In the **Federal Register** of November 18, 2008 (73 FR 68328), we issued a final rule discussing, among other things, the electronic certificate. The final rule allowed an electronic certificate to ''accompany'' the product or shipment if the certificate is identified by a unique identifier and can be accessed through a World Wide Web URL or other electronic means as long as the URL or other electronic means and the unique identifier are created in advance and are available to the Commission or to Customs and Border Protection when the product is available for inspection. The final rule also stated that importers and domestic manufacturers and private labelers satisfy the requirement of ''furnishing'' the certificate to distributors and retailers if they are given ''a reasonable means to access the certificate.'' (*See* 16 CFR 111.13, ''Availability of electronic certificate''.) The final rule, however, gave no specific details on what constitutes a ''unique identifier,'' ''other

electronic means,'' or ''reasonable means.'' What changes, if any, are needed to the rule regarding electronic certificates? Should foreign manufacturers be required to issue a certificate?

IV. Details Regarding the Workshop

The workshop will be held from 9:30 a.m. to 4 p.m. on Thursday, December 10, 2009, and Friday, December 11, 2009 at the CPSC's headquarters building at 4330 East West Highway, Bethesda, Maryland 20814, in the 4th Floor Hearing Room.

The workshop will open with a review of CPSC staff's current work on sections 14(a) and 14(d)(2) of the CPSA, including a discussion of the factors involved in sampling and an overview of the economic issues, followed by break-out sessions on the following subjects:

- The Consumer Product Labeling Program;
- Reasonable Testing Programs;
- Sampling Plans;
- Safeguarding Against Undue Influence on Product Testing;
- Additional Third-Party Testing Requirements for Children's Products; and
- Verification of Children's Product Testing Results.

The panels at the break-out sessions will consist of Commission staff and invited members from the public. If you would like to make a presentation at the workshop or be considered as a panel member for a specific break-out session, please send, via electronic mail (e-mail), a note indicating your desire to participate and/or indicating which of the break-out sessions you wish to join. We ask that you limit the number of break-out sessions to no more than three. We will select panelists and persons who will make presentations at the workshop, based on considerations such as: The individual's familiarity or expertise with the topic to be discussed; the practical utility of the information to be presented (such as a discussion of specific standards, methods, or other regulatory approaches), and the individual's viewpoint or ability to represent certain interests (such as large manufacturers, small manufacturers, consumer organizations, *etc.*). The e-mail should be sent to Robert Howell at *rhowell@cpsc.gov* no later than November 20, 2009. In addition, please inform Mr. Howell of any special equipment needs required to make a presentation. While an effort will be made to accommodate all persons who wish to make a presentation, the time allotted for presentations will depend on the number of persons who wish to speak on a given topic and the workshop schedule. We recommend that individuals and organizations with common interests consolidate or coordinate their presentations and request time for a joint presentation. If you wish to make a presentation and want to make copies of your presentation or other handouts available, you should bring copies to the workshop. We will notify those who are selected to make a presentation or participate in a break-out session panel at least 3 weeks before the workshop. Selections will be made in attempt to ensure that a wide variety of interests are represented.

If you do not wish to make a presentation, you do not need to notify the CPSC, but please be aware that seating will be on a first-come, first-served basis.

If you need special accommodations because of disability, please contact Mr. Howell at least 7 days before the workshop.

In addition, we encourage written or electronic comments to the docket. Written or electronic comments will be accepted until January 11, 2010. Please note that all comments should be restricted to how the CPSC should interpret and implement the requirements found in sections 14(a) and 14(d)(2) of the CPSA so as to promote increased product safety while minimizing possible adverse impacts or unintentional consequences of the implementing regulations to be developed.

Dated: November 9, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–27328 Filed 11–12–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed Construction of Lower Bois d'Arc Creek Reservoir in Fannin County, TX

AGENCY: Department of the Army, U.S. Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The U.S. Army Corps of Engineers, Tulsa District (USACE) has received an application for a Department of the Army Permit under Section 404 of the Clean Water Act (CWA) from the North Texas Municipal Water District (NTMWD) to construct Lower Bois d'Arc Creek Reservoir. In accordance with the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the USACE has determined that issuance of such a permit may have a significant impact on the quality of the human environment and, therefore, requires the preparation of an Environmental Impact Statement (EIS).

The USACE intends to prepare an EIS to assess the direct, indirect, and cumulative environmental, social, and economic effects of issuance of a Department of the Army permit under Section 404 of the CWA for discharges of dredged and fill material into waters of the United States (U.S.) associated with the construction of the proposed water supply reservoir. In the EIS, the USACE will assess potential impacts associated with a range of alternatives. The preparation of an EIS begins with a scoping process to determine the issues to be addressed in the EIS.

The NTMWD provides wholesale treated water supply, wastewater treatment, and regional solid waste services to 45 member cities and customers in a service area covering all or parts of Collin, Dallas, Denton, Fannin, Hunt, Kaufman, Rains, and Rockwall Counties in north central Texas. The Lower Bois d'Arc Creek Reservoir, if constructed, would be a non-federal project constructed, owned and operated by NTMWD.

DATES: A Public Scoping Meeting will be held December 8, 2009, from 3 p.m. to 8 p.m.

ADDRESSES: The Public Scoping Meeting location is Fannin County Multi-Purpose Complex, 700 FM 87, Bonham, Texas 75418, approximately 1.5 miles west of Bonham off Highway 56.

FOR FURTHER INFORMATION CONTACT: For further information or questions about the proposed action and EIS, please contact Mr. Andrew R. Commer, Supervisory Regulatory Project Manager, by letter at Regulatory Office, CESWT–RO, U.S. Army Corps of Engineers, 1645 South 101st East Avenue, Tulsa, Oklahoma 74128–4609; by telephone at 918–669–7400; by electronic mail *Andrew.Commer@usace.army.mil.* For special needs (visual or hearing impaired, Spanish translator, etc.) requests during scoping meetings, please contact Andrew Commer by November 24, 2009.

SUPPLEMENTARY INFORMATION:

1. *Description of Proposed Project:* The proposed reservoir dam would be located in Bois d'Arc Creek, in the Red River watershed, approximately 15 miles northeast of the town of Bonham,

between Farm-to-Market (FM) Road 1396 and FM Road 409, in Fannin County, TX. The proposed project site consists of 17,068 acres. Approximately 38 percent of the project site is cropland, 37 percent is bottomland hardwoods and riparian woodlands. The remaining 25 percent is mostly upland deciduous forest.

The purpose of the proposed project is to impound the waters of Bois d'Arc Creek and its tributaries to create a new 16,641 acre water supply reservoir for NTMWD. Approximately 427 acres would be required for the construction of the dam and spillways. NTMWD has requested the right to impound up to 367,609 acre-feet of water, to produce an estimated firm yield of 126,200 acre-feet of water per year. State population projections show the NTMWD service population to increase from 1.6 million to 3.3 million by 2060. The Lower Bois d'Arc Creek Reservoir would provide a new water supply to help meet this increasing demand.

Lower Bois d'Arc Creek Reservoir Dam would be about 10,400 feet in length and would have a maximum height of about 90 feet. The design top elevation of the embankment would be 553.5′ msl with a conservation pool elevation of 534.0′ msl controlled by a service spillway at elevation 534.0′ msl with a crest length of 150 feet. The service spillway would be located at the right (east) abutment of the dam. Required low-flow releases would be made through a 36-inch diameter low-flow outlet. An emergency spillway would also be located in the right abutment of the dam. The emergency spillway would be a 1,400-foot wide uncontrolled broad crested weir structure with a crest elevation of 541′ msl. This elevation was selected to contain the 100-year storm such that no flow passes through the emergency spillway during this event.

Raw water from the reservoir would be transported by 29 miles of 90-inch pipeline to a proposed water treatment plant near the City of Leonard in southwest Fannin County. To allow the NTMWD the ability to treat water from Lower Bois d'Arc Creek Reservoir at its existing facilities in Wylie, TX, 14 miles of 66-inch pipeline would also extend from the water treatment plant to an outfall on Pilot Grove Creek, a tributary of the East Fork of the Trinity River, to deliver raw water to Lake Lavon, in the Trinity River basin.

Construction of the dam and impoundment of the water within the normal pool elevation of 534′ msl would result in direct fill impact or inundation of approximately 120 acres of perennial streams, 99 acres of intermittent streams, 87 acres of open water, 4,602 acres of forested wetlands, 1,223 acres of herbaceous wetlands, and 49 acres of shrub wetlands.

2. *Alternatives:* Alternatives available to the USACE are to: (1) Issue the Department of the Army permit; (2) issue the Department of the Army permit with special conditions; or (3) deny the Department of the Army permit. Alternatives available to NTMWD include: (1) Construct Lower Bios d'Arc Creek Reservoir as proposed; (2) construct Lower Bois d'Arc Creek Reservoir as proposed by NTMWD, with modifications; (3) developing or acquiring other water supply sources; or (4) no action. As part of the EIS process, a full range of reasonable alternatives, including the applicant's preferred alternative, will be evaluated.

3. *Scoping and Public Involvement:* A public notice for the Section 404 CWA permit application was issued on the proposal on October 14, 2008 soliciting comments from federal, state, and local agencies and officials, interested individuals and the general public. The 30-day comment period was extended by 30 days until December 12, 2008 to afford ample opportunity for public and agency comment on this project. A public Scoping Meeting will be held regarding the proposed action to seek public comments on the proposed project and its potential effects to the human environment (*See* **DATES AND ADDRESSES**). The USACE will be conducting the public scoping meeting to describe the project, preliminary alternatives, the NEPA compliance process, and to solicit input on the issues and alternatives to be evaluated and other related matters. Written comments for scoping will be accepted until January 9, 2010.

4. *Significant Issues:* Issues to be given analysis in the EIS are likely to include, but will not be limited to: The effects of the lake on the immediate and adjacent property owners, nearby communities, downstream hydraulics and hydrology, wetlands, surface water quality and quantity, groundwater quality and quantity, geological resources, vegetation, fish and wildlife, federally-listed threatened and endangered species, soils, prime farmland, noise, light, aesthetics, historic and pre-historic cultural resources, socioeconomics, land use, public lands, public roads, air quality, and the effects of construction of related facilities.

5. *Cooperating Agencies:* The USACE has invited the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Forest Service, Texas Commission on Environmental Quality, Texas Parks and Wildlife Department, Texas Historical Commission, and Texas Water Development Board to be Cooperating Agencies (CA) in the formulation of the EIS. No decisions have been made on CA status at this time. Regardless of final CA status decisions, these agencies, as well as other federal, tribal, state, and local governmental entities are expected to be involved in the review and comment of the Draft EIS.

6. *Additional Review and Consultation:* Compliance with other Federal and State requirements that will be addressed in the EIS include, but are not limited to, state water quality certification under Section 401 of the CWA, protection of water quality under the Texas Pollutant Discharge Elimination System, protection of air quality under the Texas Air Quality Act, protection of endangered and threatened species under Section 7 of the Endangered Species Act, and protection of cultural resources under Section 106 of the National Historic Preservation Act.

7. *Availability of Draft EIS:* The Draft EIS is projected to be available by September 2010. There will be a public comment cycle (a public meeting(s) and opportunity for public hearing) following the release of the Draft EIS.

David A. Manning,

Chief, Regulatory Office.

[FR Doc. E9–27262 Filed 11–12–09; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Record of Decision for Stationing and Training of Increased Aviation Assets Within U.S. Army Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of Availability (NOA).

SUMMARY: The Department of the Army announces the availability of its Record of Decision (ROD) that documents and summarizes the decision for implementing actions to increase numbers and types of aviation assets and training within U.S. Army Alaska (USARAK). The decision is based on the analysis described in the Final Environmental Impact Statement (FEIS) for Stationing and Training of Increased Aviation Assets within U.S. Army Alaska (August 2009), supporting studies, and comments provided during formal comment and review periods.

ADDRESSES: Requests for copies of the Army's ROD may be made to Ms. Carrie McEnteer, Directorate of Public Works,

Attention: IMPC–FWA–PWE, 1060 Gaffney Road #4500, Fort Wainwright, AK 99703–4500; *fax:* (907) 361–9867; *e-mail address: carrie.mcenteer@us.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Linda L. Douglass, Public Affairs Office, 1060 Gaffney Road #5900, Fort Wainwright, AK 99703–5900; *telephone*: (907) 353–6701; *e-mail address: linda.douglass@us.army.mil.*

SUPPLEMENTARY INFORMATION: The Army has decided to proceed with implementing the Preferred Alternative (Alternative 2) identified in the FEIS to reorganize and augment its aviation assets in Alaska as an Aviation Task Force (ATF). The ATF will be formed by augmenting USARAK's existing assigned aviation assets (approximately 490 Soldiers and 32 helicopters) with 710 additional Soldiers and 40 additional helicopters. Alternative 2 will result in 1,200 total Soldiers and 72 total helicopters at Fort Wainwright (FWA), with a total projected population increase of approximately 2,005 (including Soldiers, Family members, and Civilian support personnel). The ATF will be permanently stationed at FWA. Construction of new facilities as well as demolition within the FWA Main Post and operation of additional generators and vehicles will be required. Training will occur on current USARAK training lands and use existing flight corridors.

By choosing to implement Alternative 2 in the ROD, the Army expects direct, indirect, and cumulative impacts as a result of troop stationing, facilities construction, and helicopter training exercises at USARAK. The principal environmental impacts will be to airspace management, cultural and visual resources, noise, hazardous materials and hazardous waste, and wildlife. Although additional helicopters will be stationed in Alaska, existing airspace aviation travel routes will be utilized, resulting in minor increases in air traffic. Significant adverse impacts will occur to the Ladd Field National Historic Landmark as a result of facility construction at FWA. Adverse impacts will be the result of the new construction being out of scale with historic buildings, historical viewshed obstruction and change in use of two historic buildings. Temporary minor noise impacts will occur due to facility construction. Noise associated with helicopter training will increase but not to a level that will significantly increase annoyance levels at FWA or surrounding lands. Hazardous materials and waste, both existing sources and those created by the stationing and operation of an aviation unit, will be managed under existing programs and agreements. Facility construction is proposed within known areas of contamination. USARAK will continue to consult with the appropriate State and federal agencies as outlined in existing agreements in order to protect human health and the environment. Various wildlife species will be affected by increased military training, specifically moose, bison, caribou, trumpeter swan, and bear; however, population level impacts will not occur. In addition, increased hunting pressure on game mammals could result from increased stationing of Soldiers.

As part of the decision to implement Alternative 2 at FWA, the Army will enact environmental mitigation measures to minimize the impacts of this decision, including the implementation and continuation of existing environmental management programs, use of best management practices, and other specific mitigation measures. The majority of mitigation measures the Army has committed to in the ROD involve the continued use of existing management programs and existing best management practices. In addition to these existing programs, the Army and the National Historic Preservation Act Section 106 consulting parties have developed specific mitigation measures to minimize the adverse effects to the Ladd Field National Historic Landmark at FWA. These measures have been outlined and agreed to in a Programmatic Agreement between the Army and the Section 106 consulting parties.

The ROD outlines that Alternative 2 reflects the proper balance of enhancing USARAK aviation capabilities, improving training opportunities for existing USARAK forces, improving the Army's ability to support worldwide military operations, and protecting the environment.

Copies of the ROD can be viewed and downloaded at *http://www.usarak.army.mil/conservation/NEPA_home.html.*

Dated: November 2, 2009.

Addison D. Davis, IV,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health).

[FR Doc. E9–27177 Filed 11–12–09; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12492–001]

Ha-Best Inc.; Notice of Application Ready for Environmental Analysis, Soliciting Motions To Intervene and Protests, and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–12492–001.

c. *Date filed:* July 3, 2007, and amended on July 31, 2008.

d. *Applicant:* Ha-Best Inc.

e. *Name of Project:* Miner Shoal Waterpower Project.

f. *Location:* The proposed project is located on the Soque River, near the Town of Demorest, Habersham County, Georgia. The proposed project does not occupy federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Don Ferguson, 34 West Jarrard Street, Cleveland, GA 30528; Telephone (706) 865–3999.

i. *FERC Contact:* Janet Hutzel, Telephone (202) 502–8675, or by e-mail at: *janet.hutzel@ferc.gov.*

j. The deadline for filing motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance of this notice and reply comments are due 105 days from the issuance date of this notice.

All documents may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''eFiling'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.'' For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov;* call toll-free at (866) 208–3676; or, for TTY, contact (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and eight copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of

that document on each person on 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.

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, contact FERC Online Support.

k. This application has been accepted and is ready for environmental analysis.

l. The proposed Minor Shoal Project would consist of the following: (1) An existing 5-foot-high, 80-foot-long diversion dam; (2) an existing 92-foot-long, 7-foot-diameter steel penstock; (3) a new 160-foot-long, 7-foot-diameter steel penstock from the diversion dam tying in to the existing penstock at elevation 1,228 feet mean sea level; (4) two existing powerhouses containing a total of three turbines with a total installed capacity of 1,260 kilowatts; (5) an existing 446-foot-long, 230-kilovolt transmission line and (6) appurtenant facilities. The project would generate an average of 2,175,000 kilowatt-hours.

m. A copy of the application is 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, contact FERC Online Support. A copy is available for inspection and reproduction at the address in Item h above.

n. 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.

All filings must: (1) Bear in all capital letters the title ''PROTEST,'' or ''MOTION TO INTERVENE,'' or ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon the representative of the applicant. A copy of all other filings must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

o. Public notice of the filing of the initial development application and amended application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to, and in compliance with, public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

p. A license applicant must file, no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27291 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13526–001]

Bowersock Mills and Power Company; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approval of Use of the Traditional Licensing Process

November 6, 2009.

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project Nos.:* 13526–001.

c. *Date Filed:* October 6, 2009.

d. *Submitted by:* Bowersock Mills and Power Company.

e. *Name of Projects:* Bowersock Mills and Power Company Kansas River Project.

f. *Location:* The project would be located on the Kansas River near the town of Lawrence, Douglas County, Kansas. The project would not occupy federal lands.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Applicant Contact:* Sara Hill-Nelson, The Bowersock Mills and Power Company, P.O. Box 66 Massachusetts Street, Lawrence, Kansas 66044, (785) 766–0884.

i. *FERC Contact:* Monte TerHaar, (202) 502–6035 or *monte.terhaar@ferc.gov.*

j. The Bowersock Mills and Power Company filed its request to use the Traditional Licensing Process on September 22, 2009. The Bowersock Mills and Power Company published public notice of its request on September 24, 2009. In a letter dated November 5, 2009, the Director of the Office of Energy Projects approved The Bowersock Mills and Power Company's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and (b) the Kansas State Historic Preservation Officer, as required by section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. The Bowersock Mills and Power Company filed a Pre-Application Document (PAD) on October 23, 2009, including a proposed process plan and schedule, with the Commission pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filing and issuances related to this or other pending projects.

For assistance, contact FERC Online Support.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27292 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2618–020]

Domtar Maine LLC; Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License.

b. *Project No.:* 2618–020.

c. *Date filed:* March 19, 2009.

d. *Applicant:* Domtar Maine LLC.

e. *Name of Project:* West Branch Project.

f. *Location:* On Grand Lake Stream, a tributary of the St. Croix River in Penobscot, Washington and Hancock Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine LLC, 144 Main Street, Baileyville, Maine 04694, (207) 427–4004.

i. *FERC Contact:* John Costello (202) 502–6119 or *john.costello@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on 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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing West Branch Project includes two developments (Sysladobsis and West Grand) comprising two dams and a dike. There are no generating facilities located at the project. The 23,500 acre impounded waters are comprised of West Grand, Junior, Pocumcus, Pug, Bottle, Norway, and Scraggly lakes.

The Sysladobsis development includes the 250-foot-long by 9-foot-high Sysladobsis Dam (the furthest upstream), an earth embankment structure with a timber gate and fish facility. The dam impounds the 5,400-acres Sysladobsis Lake and discharges directly into the West Grand development.

The West Grand development includes the 487-foot-long West Grand Dam which has a 105.9-foot-long gate structure with five waste gates. A vertical slot design upstream fish passage facility is located adjacent to the dam's waste gate No. 1.

The approximately 535-foot-long by 15-foot-high Farm Cove Dike is located approximately 3.5 miles west of the main outlet dam to West Grand Lake. The dike comprises a 10-foot-wide by 30-foot-long fishway. The dike has no gates or other flow controls; the only flow passing capability is through the fishway.

No new construction is planned.

m. A copy of the application is 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must: (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS''; (2) set forth in the heading, the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27294 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–024]

Domtar Maine LLC; Notice Of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

November 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New license.

b. *Project No.:* 2660–024.

c. *Date filed:* March 19, 2009.

d. *Applicant:* Domtar Maine LLC.

e. *Name of Project:* Forest City Project.

f. *Location:* On Forest City Stream, a tributary of the St. Croix River in Washington and Aroostock Counties, Maine and Canada.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine LLC, 144 Main Street, Baileyville, Maine 04694 (207) 427–4004.

i. *FERC Contact:* John Costello (202) 502–6119 or *john.costello@ferc.gov.*

j. Deadline for filing comments, recommendations, terms and conditions, and prescriptions is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on 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.

Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, and is ready for environmental analysis at this time.

l. The existing Forest City Project comprise an earth embankment dam containing a gated timber spillway and two impoundments (East Grand and North lakes). There are no generating facilities located at the project. Approximately one-quarter of the 544-foot-long dam (*i.e.,* approximately 147 feet) is within the United States. The United States (western) section of the dam is an earth embankment measuring approximately 110-feet-long with a maximum height of 12 feet. The center section of the dam (*i.e.,* that portion located in the river channel) contains a 55-foot-wide gated timber crib spillway structure with three wooden gates (gates 1 and 2 are located within the United States). The spillway is approximately 33 feet-wide with an elevation of 426.61 feet. A 5 foot-wide vertical slot design fishway is located in Canada. The eastern (Canadian) embankment is an earth structure approximately 397 feet-long, 30 feet-long with a crest elevation of 437.27 feet msl. No new construction is planned.

m. A copy of the application is 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

All filings must (1) bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

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, contact FERC Online Support.

n. A license applicant must file no later than 60 days following the date of issuance of this notice: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27295 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

November 3, 2009.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Docket Numbers: RP10–110–000.

Applicants: Gulf Crossing Pipeline Company LLC.

Description: Gulf Crossing Pipeline Company, LLC submits an amendment to negotiated rate letter agreements with Enterprise Products Operating LLC re the Gulf Crossing Project.

Filed Date: 10/30/2009.

Accession Number: 20091102–0105.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–111–000.

Applicants: Equitrans, L.P.

Description: Equitrans, LP submits Seventh Revised Tariff Sheets No. 317 to FERC Gas Tariff, Original volume No. 1, effective 11/1/09 .

Filed Date: 10/30/2009.

Accession Number: 20091102–0106.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–112–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits an amendment to a negotiated rate letter agreement with ONEOK Entergy Services Co., LP re the Southeast Expansion Project.

Filed Date: 10/30/2009.

Accession Number: 20091102–0107.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–113–000.

Applicants: Gulf South Pipeline Company, LP.

Description: Gulf South Pipeline Company, LP submits capacity release agreement containing negotiated rate provisions executed by Texla Energy Management, Inc.

Filed Date: 10/30/2009.

Accession Number: 20091102–0108.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–115–000.

Applicants: CenterPoint Energy Gas Transmission Company.

Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreement between CEGT and BD Energy Trading LLC.

Filed Date: 10/30/2009.

Accession Number: 20091102–0152.

Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–116–000.
Applicants: CenterPoint Energy Gas Transmission Co.
Description: CenterPoint Energy Gas Transmission Company submits amended negotiated rate agreement between CEGT and Tenaska Marketing Ventures.
Filed Date: 10/30/2009.
Accession Number: 20091102–0153.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–117–000.
Applicants: Algonquin Gas Transmission Company.
Description: Algonquin Gas Transmission, LLC submits Fourth Revised Sheet 40 to FERC Gas Tariff, Fifth Revised Volume 1, to be effective 12/1/09.
Filed Date: 11/02/2009.
Accession Number: 20091102–0154.
Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP10–118–000.
Applicants: Gulf South Pipeline Company, LP.
Description: Gulf South Pipeline Company, LP submits capacity release agreements containing negotiated rate provisions executed with BP Energy Company.
Filed Date: 10/30/2009.
Accession Number: 20091102–0158.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–119–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Natural Gas Pipeline Company of America LLC submits an amendment to the Transportation Rate Schedules FTS Agreement with a negotiated rate exhibit with Wisconsin Electric Power Company.
Filed Date: 10/30/2009.
Accession Number: 20091102–0155.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–120–000.
Applicants: Texas Eastern Transmission LP.
Description: Texas Eastern Transmission, LP submits Forty-Sixth Revised Sheet 26 *et al.* to FERC Gas Tariff, Seventh Revised Volume 1 and First Revised Volume 2, to be effective 12/1/09.
Filed Date: 10/30/2009.
Accession Number: 20091103–0054.
Comment Date: 5 p.m. Eastern Time on Thursday, November 12, 2009.

Docket Numbers: RP10–121–000.
Applicants: Texas Gas Transmission, LLC.
Description: Texas Gas Transmission, LLC submits three negotiated rate agreements with Duke Energy Kentucky, Inc. *et al.*
Filed Date: 11/02/2009.
Accession Number: 20091103–0053.
Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP10–122–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits Fifth Revised Sheet 412A *et al.* to its FERC Gas Tariff, Fifth Revised Volume 1, effective 12/2/09.
Filed Date: 11/02/2009.
Accession Number: 20091103–0052.
Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP10–123–000.
Applicants: ANR Pipeline Company.
Description: ANR Pipeline Company submits Rate Schedule ETS and eleven Rate Schedule FTS-1 negotiated rate service agreements, to be effective 11/1/09.
Filed Date: 11/02/2009.
Accession Number: 20091103–0051.
Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

Docket Numbers: RP10–124–000.
Applicants: Tennessee Gas Pipeline Company.
Description: Tennessee Gas Pipeline Company submits Eighteenth Revised Sheet 4 to its FERC Gas Tariff, Original Volume 2, effective 12/2/09 under RP10–124.
Filed Date: 11/02/2009.
Accession Number: 20091103–0050.
Comment Date: 5 p.m. Eastern Time on Monday, November 16, 2009.

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 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.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–27300 Filed 11–12–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP10–4–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Intent To Prepare an Environmental Assessment for the Proposed Phase V Expansion Project and Request for Comments on Environmental Issues

November 6, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Phase V Expansion Project involving construction and operation of facilities by Gulfstream Natural Gas System, L.L.C. (Gulfstream) in Manatee County, Florida. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues need to be evaluated in the EA. Please note that the

scoping period will close on December 7, 2009.

This notice is being sent to the Commission's current environmental mailing list for the project, which includes affected landowners; Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; parties to this proceeding; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this proposed project and encourage them to comment on their areas of concern.

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 Gulfstream 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 also available for viewing on the FERC Internet Web site (*htpp://www.ferc.gov*).

Summary of the Proposed Project

Gulfstream proposes to construct and operate a new turbine-driven compressor unit at its existing Station 420 Compressor Station in Manatee County, Florida. The new 20,500-horsepower Solar Titan 130 compressor would be located within the existing station boundaries. Gulfstream also proposes to replace the impellers of the two existing turbines at Station 420 to match the flow conditions present after the installation of the new compressor.

The proposed project would provide an additional 35,000 dekatherms per day of firm natural gas service to the Hines Electric Generation Station in Polk County, Florida. The location of Station 420 and the proposed unit is shown in appendix 1.[1]

Land Requirements for Construction

All construction, including the laydown yard north of the station fenceline, would take place on land owned by Gulfstream. Gulfstream would extend its existing compressor building to accommodate the new unit. The laydown yard would be revegetated and allowed to revert to its pre-construction condition after construction is completed. No new access roads would be constructed; however, existing station driveways would be improved.

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 [2] 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, the Commission requests public comments on the scope of the issues to address in the EA. All comments received will be considered during the preparation of the EA.

In the EA, we 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;
- Water resources, fisheries, and wetlands;
- Cultural resources;
- Vegetation and wildlife;
- Threatened and endangered species;
- Land use, recreational, and visual resources;
- Air quality and noise; and
- Public safety.

We will also evaluate possible alternatives to the proposed project site and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to those on our mailing list (*see* discussion of how to remain on our mailing list on page 4). 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 discussion below.

With this notice, we are asking agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation discussion.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that they will be received in Washington, DC on or before December 7, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances, please reference the project docket number (CP10–4–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the FERC Internet Web site at *http://www.ferc.gov* under the ''*Documents and Filings''* link. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature under the ''*Documents and Filings''* link. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up''* or ''*eRegister''*. You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments with the Commission via mail by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 1, PJ–11.1.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in

[1] The appendices referenced in this notice are not being published in the **Federal Register.** Copies of appendices were sent to all those receiving this notice by mail and are available at *http://www.ferc.gov* at the link called ''eLibrary'' 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.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

and/or potentially affected by the proposed project. This includes all landowners who own homes within a certain distance (as defined in the Commission's regulations) of the compressor station site.

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request form (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 ''intervenor'', which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''*eFiling*'' link on the Commission's Web site.

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 Internet at *http://www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, then on ''General Search'' and enter the docket number, excluding the last three digits (*i.e.*, CP10–4), 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 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27296 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2496–194]

Eugene Water and Electric Board; Notice of Availability of Environmental Assessment

November 5, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879) the Commission has reviewed an application filed by Eugene Water and Electric Board (licensee) on December 24, 2008, and supplemented on January 27 and April 1, 2009, requesting Commission approval to construct a new boat launch at the Leaburg-Walterville Hydroelectric Project (FERC No. 2496). The proposed boat launch would be located at the project's Leaburg Development, along Leaburg Lake, near the Goodpasture covered bridge.

The Commission has prepared an environmental assessment (EA) that evaluates the environmental impacts of the licensee's proposal. The EA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The EA is attached to a Commission order titled ''Order Approving Amendment to Recreation Plan Pursuant to Article 432'', issued October 30, 2009, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number (P–2496) 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 1–866–208–3372, or for TTY, (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27293 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–1729–000]

Conectiv Mid Merit, LLC; Notice of Filing

November 5, 2009.

Take notice that, on November 4, 2009, Conectiv Mid Merit, LLC filed an amendment to their application for market-based rate authority filed on September 25, 2009 in the above-captioned docket, pursuant to the Commissions' request. Such filing serves to reset the filing dates in these proceedings.

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, 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.

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 November 25, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27289 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER10–117–000]

North American Power and Gas, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

November 6, 2009.

This is a supplemental notice in the above-referenced proceeding of North American Power and Gas, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is November 27, 2009.

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-referenced proceeding 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27290 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR10–2–000]

PELICO Pipeline, LLC; Notice of Petition for Rate Approval

November 5, 2009.

Take notice that on October 30, 2009, PELICO Pipeline, LLC (PELICO) filed a petition for rate approval pursuant to section 284.123(b)(2) of the Commission's regulations. PELICO requests that the Commission approve an increase in its maximum rate f from $0.2322 to $0.3291 per MMBtu for firm and interruptible transportation service.

Any person desiring to participate in this rate proceeding must file a motion 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 on Monday, November 16, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–27288 Filed 11–12–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8799–2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly Receipt of Environmental Impact Statements

Filed 11/02/2009 Through 11/06/2009

Pursuant to 40 CFR 1506.9.

EIS No. 20090379, Draft Supplement, COE, FL, Brevard County, Florida Hurricane and Storm Damage Reduction Project, To Reduce the Damages Caused by Erosion and Coastal Storms to Shorefront Structures Along the Mid-Reach Segment, Implementation, Brevard County, FL, *Comment Period Ends:* 12/28/2009, *Contact:* Candida Bronson 904–232–1697.

EIS No. 20090380, Final EIS, NPS, GA, Chattahoochee River National Recreation Area General Management Plan, Preferred Alternative is F, Future Directions for the Management and Use of Chattahoochee River National Recreation Area, Implementation, Chattahoochee River, Atlanta, GA, *Wait Period Ends:* 12/14/

2009, *Contact:* David Libman 404–507–5701.

EIS No. 20090381, Draft EIS, IBR, CA, New Melones Lakes Area Resource Management Plan, Implementation, Tuolumne and Calaveras Counties, CA, *Comment Period Ends:* 01/04/2010, *Contact:* Melissa Vignau 916–989–7182.

EIS No. 20090382, Draft EIS, IBR, CA, Central Valley Project Water Supply Contracts Under Public Law 101–514 (Section 206), Proposed Water Service Contracts with the El Dorado County Water Agency, El Dorado County, CA, *Comment Period Ends:* 12/28/2009, *Contact:* Elizabeth Dyer 916–989–7256.

EIS No. 20090383, Final EIS, BLM, NV, Bald Mountain Mine North Operations Area Project, Proposes to Expand Current Mining Operations at several Existing Pits, Rock Disposal Areas, Heap Leach Pads, Processing Facilities, and Interpit Area, Combining the Bald Mountain Mine Plan of Operations Boundary and the Mooney Basin Operation Area Boundary, White Pine County, NV, *Wait Period Ends:* 12/14/2009, *Contact:* Lynn Bjorklund 775–289–1893.

EIS No. 20090384, Draft EIS, NOA, CA, Fruit Growers Supply Company's Multi-Species Habitat Conservation Plan, Implementation, Authorization for Incidental Take Permit, Siskiyou County, CA, *Comment Period Ends:* 02/11/2010, *Contact:* Lisa Roberts 707–825–5178.

EIS No. 20090385, Draft Supplement, TVA, AL, Bellefonte Site Single Nuclear Unit Project, Proposes to Complete or Construct and Operate a Single 1,100–1, 200 MW Nuclear Generation Unit, Jackson County, AL, *Comment Period Ends:* 12/28/2009, *Contact:* Andrea L. Sterdis 423–751–7119.

EIS No. 20090386, Draft EIS, BLM, CA, Ivanpah Solar Electric Generating System (07–AFC–5) Project, Proposal to Construct a 400-m Megawatt Concentrated Solar Power Tower, Thermal-Electric Power Plant, San Bernardino County, CA, *Comment Period Ends:* 02/11/2010, *Contact:* Tom Hurshman 970–240–5345.

EIS No. 20090387, Final EIS, BLM, CA, Carrizo Plain National Monument, Draft Resource Management Plan, Implementation, San Luis Obispo County and Portion of western Kern County, CA, *Wait Period Ends:* 12/14/2009, *Contact:* Susan Porter 661–391–6067.

EIS No. 20090388, Draft EIS, AFS, OR, Fremont-Winema National Forests Invasive Plant Treatment, Propose to Treat up to 8,700 Acres of Invasive Plant Infestation Per Year, Klamath and Lake Counties, OR, *Comment Period Ends:* 12/28/2009, *Contact:* Sarah Malaby 541–947–2151.

EIS No. 20090389, Final EIS, AFS, CA, Beaverslide Timber Sale and Fuel Treatment Project, Proposing to Harvest Commercial Timber and Treat Hazardous Fuels, Six Rivers National Forest, Mad River Ranger District, Trinity County, CA, *Wait Period Ends:* 12/14/2009, *Contact:* Keith Menasco 707–574–6233.

EIS No. 20090390, Draft EIS, NOA, 00, Amendment 31 to the Fishery Management Plan for Reef Fish Resources, Addresses Bycatch of Sea Turtles in the Bottom Longline Component of the Reef Fish Fishery, Gulf of Mexico, *Comment Period Ends:* 12/28/2009, *Contact:* Roy E. Crabtree 727–824–5701.

Dated: November 9, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–27312 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8980–9]

NACEPT Subcommittee on Promoting Environmental Stewardship

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the NACEPT Subcommittee on Promoting Environmental Stewardship.

The purpose of the Subcommittee on Promoting Environmental Stewardship (SPES) of the National Advisory Council for Environmental Policy and Technology (NACEPT) is to advise the U.S. Environmental Protection Agency on how to promote environmental stewardship practices that encompass all environmental aspects of an organization in the regulated community and other sectors, as appropriate, in order to enhance human health and environmental protection. A copy of the meeting agenda will be posted at *http://epa.gov/ncei/dialogue.htm.* This Web site also includes the charge of the SPES, which provides further information about the purpose of the Subcommittee.

The meeting agenda will focus on the Subcommittee's potential recommendations to the Agency on how to promote environmental stewardship.

DATES: The NACEPT Subcommittee on Promoting Environmental Stewardship will hold an open meeting on December 1 (8 a.m.–5 p.m.) and December 2, 2009 8 a.m.–5 p.m.) Eastern.

ADDRESSES: The Westin Arlington Gateway, 801 North Glebe Road, Arlington, VA 22203, Ballroom B (second floor). (two blocks from Ballston Metro Station.)

FOR FURTHER INFORMATION CONTACT: Regina Langton, Designated Federal Officer, *langton.regjna@epa.gov,* 202–566–2178, U.S. EPA Office of Policy, Economics, and Innovation (MC1807T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the SPES should be sent to Jennifer Peyser at (202) 965–6215 or *jpeyser@RESOLV.org.* All requests must be received no later than November 24, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Jennifer Peyser at *jpeyser@RESOLV.org.* To request accommodation of a disability, please contact Jennifer Peyser at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 6, 2009.

Regina Langton,

Designated Federal Officer.

[FR Doc. E9–27286 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Notice

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Wednesday, November 18, 2009, 2 p.m. Eastern Time.

PLACE: Commission Meeting Room on the First Floor of the EEOC Office Building, 131 ''M'' Street, NE., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and

2. Notice of Proposed Rulemaking on Reasonable Factors Other than Age under the Age Discrimination in Employment Act.

Note: In accordance with the Sunshine Act, the meeting will be open to public observation of the Commission's deliberations and voting. Seating is limited and it is suggested that visitors arrive 30 minutes before the meeting in order to be processed through security and escorted to the meeting room. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, a copy is posted on EEOC's Web site, *http://www.eeoc.gov.*, and the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above.

CONTACT PERSON FOR MORE INFORMATION: Stephen Llewellyn, Executive Officer on (202) 663–4070.

Dated: November 10, 2009.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

[FR Doc. E9–27432 Filed 11–10–09; 4:15 pm]

BILLING CODE 6570–01–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Senior Executive Service Performance Review Board Membership

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the Performance Review Board of the Equal Employment Opportunity Commission.

FOR FURTHER INFORMATION CONTACT: Lisa M. Williams, Chief Human Capital Officer, U.S. Equal Employment Opportunity Commission, 131 M Street, NE., Washington, DC 20507, (202) 663–4306.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314(c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes written recommendations to the Acting Chairman of EEOC regarding performance ratings, performance awards, and pay-for-performance pay adjustments. The Board shall consist of at least three voting members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees, pursuant to 5 U.S.C. 4314(c)(5). The following individuals have been designated to serve on the Commission's Performance Review Board:

Primary Members: Lisa M. Williams, Chief Human Capital Officer, (Chair); Deidre M. Flippen, Director, Office of Research, Information and Planning; Danny G. Harter, Director, Indianapolis District Office; John Clarke Hendrickson, Senior Litigation Project Manager (Regional Attorney), Chicago District Office; Cynthia G. Pierre, PhD, Enforcement Director, U.S. Department of Education, Office of Civil Rights; Jocelyn Samuels, Senior Counselor to the Assistant Attorney General, Department of Justice, Civil Rights Division; and Thomas J. Schlageter, Director, Advice and External Litigation Division, Office of Legal Counsel.

Alternate: Mary Jo O'Neill, Regional Attorney, Phoenix District Office.

DATES: Membership is effective on the date of this notice.

Signed at Washington, DC on this 6th day of November 2009.

For the Commission.

Stuart J. Ishimaru,

Acting Chairman.

[FR Doc. E9–27329 Filed 11–12–09; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Federal Acquisition Regulation; Information Collection; Defense Production Act Amendments

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning Defense Production Act Amendments.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Comments may be submitted on or before January 12, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Branch, GSA, (202) 501–4082 or e-mail *jeritta.parnell@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses per Respondent: 3.
Total Annual Responses: 18.
Hours per Response: 100.
Total Burden Hours: 1,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from

the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0133, Defense Production Act Amendments, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27251 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Federal Acquisition Regulation; Information Collection; Cost Accounting Standards Administration

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning cost accounting standards administration.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before January 12, 2010.

ADDRESSES: Submit comments including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Chambers, Procurement Analyst, Contract Policy Branch, GSA, 501–3221 or e-mail *Edward.chambers@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.

Responses per Respondent: 2.27.

Total Responses: 1,462.

Average Burden Hours per Response: 200.85.

Total Burden Hours: 293,643.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27246 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB Clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. This OMB Clearance expires on March 31, 2010.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Procurement Analyst, Contract Policy Branch, GSA (202) 208–4949 or e-mail *michaelo.jackson@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DOD, NASA, and GSA amended the Federal Acquisition Regulation (FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 37,500.
Responses per Respondent: 34.
Total Responses: 1,275,000.
Hours per Response: .312.
Total Burden Hours: 397,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136, Commercial Item Acquisitions, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27247 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114]

Federal Acquisition Regulation; Information Collection; Right of First Refusal of Employment

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement concerning rights of first refusal of employment.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before January 12, 2010.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Sakalos, Procurement Analyst, Contract Policy Branch, GSA, (202) 208–0498 or e-mail *lori.sakalos@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

As prescribed in FAR 7.305(c), Right of First Refusal of Employment is a regulation which establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 304.

Responses per Respondent: 1.

Total Responses: 304.

Average Burden Hours per Response: 3.

Total Burden Hours: 912.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control Number 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27250 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0091]

Federal Acquisition Regulation; Submission for OMB Review; Anti-Kickback Procedures

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning anti-kickback procedures. A request for public comments was published in the **Federal Register** at 74 FR 30093, on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before December 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Suzanne Neurauter, Procurement Analyst, Contract Policy Branch, GSA (202) 219–0310 or e-mail *Suzanne.neurauter@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Federal Acquisition Regulation (FAR) 52.203–7, Anti-Kickback Procedures, requires that all contractors have in place and follow reasonable procedures designed to prevent and detect in its own operations and direct business relationships, violations of section 3 of the Anti-Kickback Act of 1986 (41 U.S.C. 51–58). Whenever prime contractors or subcontractors have reasonable grounds to believe that a violation of section 3 of the Act may have occurred, they are required to report the possible violation in writing to the contracting agency or the Department of Justice. The information is used to determine if any violations of section 3 of the Act have occurred.

B. Annual Reporting Burden

Respondents: 100.
Responses per Respondent: 1.
Annual Responses: 100.
Hours per Response: 1.
Total Burden Hours: 100.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0091, Anti-Kickback Procedures, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27249 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0058]

Federal Acquisition Regulation; Submission for OMB Review; Schedules for Construction Contracts

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of reinstatement request for an information collection requirement regarding an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning schedules for construction contracts. A request for public comments was published in the **Federal Register** at 74 FR 30092, on June 24, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, 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; ways to enhance the quality, utility, and clarity of the information to be collected; 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.

DATES: Submit comments on or before December 14, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ernest Woodson, Procurement Analyst, Contract Policy Branch, (202) 501–3775 or e-mail *ernest.woodson@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with FAR the Contractor shall, within five days after work commences on the contract or another period of time determined by the Contracting Officer, prepare and submit to the Contracting Officer for approval three copies of a practicable schedule showing the order in which the Contractor proposes to perform the work, and the dates on which the Contractor contemplates starting and completing the several salient features of the work (including acquiring materials, plants, and equipment). The schedule shall be in the form of a progress chart of suitable scale to indicate appropriately the percentage of work scheduled for completion by any given date during the period. If the Contractor fails to submit a schedule within the time prescribes, the Contracting Officer may withhold approval of progress payments until the Contractor submits the required schedule.

B. Annual Reporting Burden

Respondents: 2,600.
Responses per Respondent: 2.
Annual Responses: 5,200.
Hours per Response: 1.
Total Burden Hours: 5,200.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0058, Schedules for Construction Contracts, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27248 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0121]

General Services Administration Acquisition Regulation; Information Collection; Industrial Funding Fee and Sales Reporting

AGENCY: Office of the Acquisition Policy, GSA.

ACTION: Notice of request for reinstatement of an information collection requirement for an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement regarding industrial funding fee and sales reporting.

Public comments are particularly invited on: Whether this collection of information is necessary 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; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Warren Blankenship, Procurement Analyst, Contract Policy Branch, at telephone (202) 501–1900 or via e-mail to *warren.blankenship@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (MVPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The clause requires the contractor to report a quarterly dollar value of all sales under the contract by calendar quarter. A separate report is required for each National Stock Number (NSN) or sub-item. The report is made electronically in accordance with the program office requirements. It is also used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a FSS contract, negotiate better prices based on volume and for special reports. The information is used primarily by contracting officers to estimate requirements for the subsequent year, evaluate the effectiveness of a schedule, negotiate better prices based on volume and for special reports.

B. Annual Reporting Burden

Respondents: 17,000.
Responses per Respondent: 20.
Total Responses: 340,000.
Hours per Response: .0833.
Total Burden Hours: 28,322.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (MVPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0121, Industrial Funding Fee and Sales Reporting, in all correspondence.

Dated: November 5, 2009.

Al Matera,

Director, Acquisition Policy Division.

[FR Doc. E9–27252 Filed 11–12–09; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–10–10AA]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Maryam I. Daneshvar, CDC Acting Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Occupational Safety and Health Professional Workforce Assessment: Employer and Education Provider Survey Data Collection—New—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The mission of the NIOSH is to generate new knowledge in the field of occupational safety and health (OS&H) and to transfer that knowledge into practice for the betterment of workers. Developing and supporting a new generation of practitioners is critical to the future of occupational safety and health. As part of its mission to increase safety and protect worker health, NIOSH funds programs to support occupational safety and health education through 17 regional university-based Education and Research Centers and 31 Training Project grants that train occupational safety and health professionals to meet the increasing demand for these professionals.

Because of this central role NIOSH plays in the education and training of OS&H workers and because of the continually changing nature of the workplace, over the last 38 years NIOSH has sponsored 3 OS&H workforce assessments. These were conducted in 1977 and 1985 by NIOSH; and in 2000 the Institute of Medicine conducted a workforce assessment at NIOSH's request. NIOSH is planning to perform another assessment to examine the current and anticipated future professional OS&H workforce. The assessment will attempt to collect information from two groups—employers of OS&H professionals and providers of training programs for OS&H professionals.

The information collected from employers will concern the current supply and future demand for OS&H professionals; and the desired professional competencies (*i.e.,* knowledge, skills, and abilities) required for the coming decade.

To ensure that the overall proposed methodology for collecting information from employers is successful in collecting the information required, we will conduct a phase I study with a small group of employers. Should any needed methodological changes be identified, NIOSH will submit a request for modification to OMB. If no substantive methodological changes are required, the phase II study will proceed and the phase I data will be included in the phase II study data set. It is expected that approximately 744 employers will have to be screened in Phase I and 6,681 in Phase II to yield approximately 400 employer responses (40 in the employer phase I, 360 in the employer phase II study).

The initial step in the study of employers will be to sample the total number of establishments needed for screening. The phase I portion of employers then will be conducted using approximately 744 of the establishments sampled and the following methodology:

- A telephone screening to identify employers of OS&H professionals will be conducted. During the screening to identify employers of OS&H professionals, we will also obtain contact information for the most appropriate respondent. It is expected that the appropriate respondent will be

the Human Resources Administrator for the employer.

• A letter describing the study will be mailed to all eligible phase I establishments inviting them to participate, and providing Web access information.

• Data collection then will be primarily by web questionnaire. After two weeks, all non-respondents will receive a special delivery service envelope containing another copy of the invitation letter. Two weeks later, telephone contact with non-respondents will begin. Up to 7 attempts to contact each potential respondent by telephone will be made. (When contact is made, respondents will be encouraged to complete the questionnaire on the Web or by telephone at that time.)

Assuming no methodological changes result from the phase I study, the phase II employer study then will begin with telephone screening of an additional 6,681 establishments. The data collection methodology will be identical to that described for the phase I study of employers.

The study of educational providers will be a census of the approximately 400 educational providers identified and listed as part of this effort. There will be no sampling or screening activities. The information collected will be similar to that collected from employers. Beginning with the invitation letter, the data collection methodology for educational providers will be identical to that of the phase II study of the employers. We expect 180 educational providers to respond to either the Web or telephone questionnaire.

There is no cost to any respondents other than their time.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Average number of responses per respondent	Average burden per response in hours	Total burden hours
Human Resources Administrator	Employer Phase I Screening	744	1	5/60	62
Human Resources Administrator	Employer Phase I Questionnaire (Web or Telephone).	40	1	32/60	21
Human Resources Administrator	Employer Phase II Screening	6,681	1	5/60	557
Human Resources Administrator	Employer Phase II Questionnaire (Web or Telephone).	360	1	32/60	192
Education Administrator	Provider Questionnaire (Web or Telephone).	180	1	22/60	66
Total					898

Dated: November 6, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–27334 Filed 11–12–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10053]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: The necessity and utility of the proposed information collection for the proper performance of the agency's functions; the accuracy of the estimated burden; ways to enhance the quality, utility, and clarity of the information to be collected; and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Paid Feeding Assistants in Long-Term Care Facilities and Supporting Regulations at 42 CFR 483.160; *Use:* Section 42 CFR 483 permits long-term care facilities to use paid feeding assistants to supplement the services of certified nurse aides. If facilities choose this option, feeding assistants must complete a specified training program. In addition, a facility must maintain a record of all individuals used by the facility as feeding assistants, who have successfully completed the training course for paid feeding assistants. This information is used as part of the process to determine facility compliance with this requirement. *Form Number:* CMS–10053 (OMB#: 0938–0916); *Frequency:* Reporting—Yearly; *Affected Public:* Private Sector: Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 13,280; *Total Annual Responses:* 4,250; *Total Annual Hours:* 25,500. (For policy questions regarding this collection, contact Susan Joslin at 410–786–3516. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at: *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *January 12, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development,

Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 5, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–27297 Filed 11–12–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09CD]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Laboratory Medicine Best Practices Project (LMBP)—New—National Center for Preparedness, Detection, and Control of Infectious Diseases (NCPDCID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

CDC is seeking approval from the Office of Management and Budget (OMB) to collect information from healthcare organizations in order to conduct a systemic review of laboratory practice effectiveness. The purpose of information collection is to include completed unpublished quality improvement studies/assessments carried out by healthcare organizations (laboratories, hospitals, clinics) in systematic reviews of practice effectiveness. CDC has been sponsoring the Laboratory Medicine Best Practices (LMBP) initiative to develop new systematic evidence review methods for making evidence-based recommendations in laboratory medicine. This initiative supports the CDC's mission of improving laboratory practices.

The focus of the initiative is on pre- and post-analytic laboratory medicine practices that are effective at improving healthcare quality. While evidence-based approaches for decision-making have become standard in healthcare, this has been limited in laboratory medicine. No single evidence-based model for recommending practices in laboratory medicine exists, although the number of laboratories operating in the United States and the volume of laboratory tests available certainly warrant such a model.

The Laboratory Medicine Best Practices Initiative began in October 2006, when DLS convened the Laboratory Medicine Best Practices Workgroup (Workgroup), a multidisciplinary panel of experts in several fields including laboratory medicine, clinical medicine, health services research, and health care performance measurement. The Workgroup has been supported by staff at CDC and the Battelle Memorial Institute under contract to CDC.

To date, the Laboratory Medicine Best Practices (LMBP) project work has been completed over three phases. During Phase 1 (October 2006–September 2007) of the project, CDC staff developed systematic review methods for conducting evidence reviews using published literature, and completed a proof-of-concept test. Results of an extensive search and review of published literature using the methods for the topic of patient specimen identification indicated that an insufficient quality and number of studies were available for completing systematic evidence reviews of laboratory medicine practice effectiveness for multiple practices, and hence for making evidence-based recommendations. These results were considered likely to be generalizable to most potential topic areas of interest.

A finding from Phase 1 work was that laboratories would be unlikely to publish quality improvement projects or studies demonstrating practice effectiveness in the peer reviewed literature, but that they routinely conducted quality improvement projects and had relevant data for completion of evidence reviews. Phase 2 (September 2007–November 2008) and Phase 3 (December 2008–September 2009), involved further methods development and pilot tests to obtain, review, and evaluate published and unpublished evidence for practices associated with the topics of patient specimen identification, communicating critical value test results, and blood culture contamination. Exploratory work by CDC supports the existence of relevant unpublished studies or completed quality improvement projects related to laboratory medicine practices from healthcare organizations. The objective for successive LMBP evidence reviews of practice effectiveness is to supplement the published evidence with unpublished evidence to fill in gaps in the literature.

Healthcare organizations and facilities (laboratory, hospital, clinic) will have the opportunity to voluntarily enroll in an LMBP network and submit readily available unpublished studies, quality improvement projects, evaluations, assessments, and other analyses relying on unlinked, anonymous data using the LMBP Submission Form. LMBP Network participants will also be able to submit unpublished studies/data for evidence reviews on an annual basis using this form. There will be no charge to respondents for their participation, other than their time. The total estimated annualized burden hours for this information collection request are 100 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Healthcare Organizations	150	1	40/60

Dated: November 6, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–27335 Filed 11–12–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Criteria for Vaccination Requirements for U.S. Immigration Purposes

AGENCY: Centers for Disease Control and Prevention (CDC).

ACTION: Final notice of agency action.

DATES: This agency action is effective December 14, 2009.

FOR FURTHER INFORMATION CONTACT: Ashley A. Marrone, J.D., U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, Division of Global Migration and Quarantine, 1600 Clifton Road, NE. (E03), Atlanta, GA 30333; Telephone, 404–498–1600.

SUMMARY: On April 8, 2009, the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register** (74 FR 15986) seeking public comment on proposed criteria that CDC intends to use to determine which vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for the general U.S. population should be required for immigrants seeking admission into the United States or seeking adjustment of status to that of an alien lawfully admitted for permanent residence. This final notice describes the criteria that CDC has adopted.

At present, CDC requires all vaccinations against vaccine-preventable diseases explicitly listed in section 212(a)(1)(A)(ii) of the Immigration and Nationality Act, as well as all vaccinations recommended by the ACIP for the general U.S. population. After the effective date of this notice, CDC will continue to require the vaccinations explicitly listed in section 212(a)(1)(A)(ii)—mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B, and hepatitis B—and, for all other vaccinations recommended by ACIP for the general U.S. public, CDC will begin requiring only those for which there is a public health need at the time of immigration/change of status based on the following criteria:

1. The vaccine must be an age-appropriate vaccine as recommended by the ACIP for the general U.S. population, and

2. At least one of the following:

a. The vaccine must protect against a disease that has the potential to cause an outbreak.[1]

b. The vaccine must protect against a disease that has been eliminated in the United States or is in the process for elimination in the United States.[2]

SUPPLEMENTARY INFORMATION:

Background

Under section 212(a)(1)(A)(ii) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(1)(A)(ii)), any alien who seeks admission into the United States as an immigrant, or who seeks adjustment of status to the status of an alien lawfully admitted for permanent residence, is inadmissible into the United States if the alien is unable to present documentation of having received vaccination against ''vaccine-preventable diseases, which shall include at least the following diseases: Mumps, measles, rubella, polio, tetanus and diphtheria toxoids, pertussis, *Haemophilus influenzae* type B, and hepatitis B, and any other vaccinations against vaccine-preventable diseases recommended by the Advisory Committee on Immunization Practices.'' Aliens subject to this provision may apply for a waiver in certain circumstances, e.g., if the vaccination is not medically appropriate or contrary to the alien's religious beliefs or moral convictions.

Medical examinations, including an evaluation to determine whether an alien has received these vaccinations, are authorized under section 232 of the INA (8 U.S.C. 1222). Under sections 212(a)(1) and 232 of the INA (8 U.S.C. 1182(a)(1), 1222), and section 325 of the Public Health Service Act (42 U.S.C. 252), the Department of Health and Human Services (HHS) publishes regulations establishing requirements for the medical examination. The Secretary of HHS has delegated the authority for administering these regulations to the Centers for Disease Control and Prevention (CDC). The regulations are codified in 42 CFR part 34. Panel physicians and civil surgeons, through contractual agreements and by designations with the Department of State (DOS) and the Department of Homeland Security (DHS), respectively, conduct the medical examinations in accordance with these regulations. CDC also publishes Technical Instructions (TIs) for the medical examinations, which must be followed by panel physicians and civil surgeons. The vaccinations required by the INA are listed in the Technical Instructions (*see http://www.cdc.gov/ncidod/dq/technica.htm*).

Since 1996, when the vaccination requirement was added to the INA, CDC has required immigrants subject to the INA vaccination requirement to receive all vaccinations routinely recommended by the Advisory Committee on Immunization Practices (ACIP) for the general U.S. population. Vaccine development has evolved since 1996 and, in addition, a greater number of vaccines are recommended by ACIP than were recommended when the legislation was enacted. As a result, CDC is reassessing which of these vaccinations are appropriate for immigration purposes, taking into consideration both the context in which they are given as well as the interests of public health.

To meet the threshold for consideration, a vaccine must first be an age-appropriate vaccine as recommended by the ACIP for the general U.S. population. After this determination is satisfied, the vaccine must protect against (1) a disease that has the potential to cause an outbreak, and/or (2) a disease that has been eliminated in the United States or is in the process for elimination in the United States. Outbreak is defined as the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time. The determination of an outbreak may be made in a variety of scenarios. For example, an outbreak may be determined by comparing the current number of cases of disease with the background rate of the disease. The ''background rate'' of disease is the rate at which the disease usually occurs, at a particular time, in a particular population, or in a particular place. Therefore, the occurrence of a disease above the background rate, so that more people than usual or an unexpected group of people have become ill with the same disease in a given geographic area, or over a given period of time, could be viewed as an outbreak.

In general, and as observed through previous experience, an outbreak is associated with a public health response (e.g., initiation of an investigation,

[1] For purposes of this Notice, ''outbreak'' means the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time.

[2] ''Elimination'' is the reduction to zero of the incidence of infection caused by a specific agent in a defined geographic area as a result of deliberate efforts; continued measures to prevent re-establishment of transmission are required.

dissemination of prophylaxis, or public health messaging to change behavior).

CDC will also consider whether the disease has been eliminated in the United States or is in the process for elimination in the United States. ''Elimination'' is the reduction to zero of the incidence of infection caused by a specific agent in a defined geographic area as a result of deliberate public health efforts; continued measures to prevent re-establishment of transmission are required.[3] Therefore, if a vaccine is an age-appropriate vaccine as recommended by the ACIP for the general U.S. population, and the disease is in the process for elimination in the United States, it will be required for immigration purposes. The prevention of outbreaks and progress toward elimination represent two core public health goals. These criteria aim to prevent outbreaks and the re-introduction of vaccine-preventable diseases that have been eliminated or are in the process for elimination in the U.S. through the immunization of immigrants.

Congress mandated vaccinations for immigrants to decrease the public health threat from disease importation. Outbreak potential and absence of a vaccine-preventable disease in the United States (because of elimination or movement toward elimination through vaccination) are the critical public health concerns in determining which vaccines should be mandated for immigration to the United States. Evidence shows that disease importation contributes to many current vaccine-preventable disease outbreaks in the United States, and is solely responsible for outbreaks of eliminated diseases. For example, close to 90% of the measles cases reported in the U.S. during 2008 were either acquired abroad or linked to imported cases resulting in 7 outbreaks involving 135 persons.[4] Some of these cases are attributable to traveling unvaccinated U.S. citizens. Such disease vulnerability among U.S. citizens is beyond the scope of this notice and should be addressed by states and other public health authorities. The INA immigrant vaccination mandate, however, provides a significant opportunity to reduce the potential of disease importation, in particular of those diseases (1) where a single case has the potential to spread widely or (2) to threaten reintroduction of an eliminated disease.

Disease prevention vigilance at the borders through imposition of vaccination mandates focused on those diseases of outbreak or elimination significance serves a critical role in the multi-layered public health response to vaccine-preventable diseases. State vaccination mandates for school attendance and availability of vaccines for children through public health programs add other layers to that public health response. Working together, these layers result in vibrant vaccination coverage that protects the health of our citizens, individually and as a whole.

Further, it should be noted that given the existence of this multi-layered public health system for assuring adequate vaccination of all Americans, determination that a vaccine should not be mandated at time of immigration or change in status is not relevant to and should not in any way be considered a factor in determining whether or not that vaccine should be required for school entry or otherwise mandated by a state or other public health entity. Immunization mandates at various times and places are a highly important and effective public health tool for preventing vaccine-preventable diseases.

CDC has developed and accepted the criteria described in this Notice specifically for the required medical examination performed for U.S. immigration purposes. CDC stands behind all ACIP recommendations for the general U.S. population of which the immigrants will become part. CDC expects that such individuals will avail themselves of those vaccines not mandated for immigration as they make future wise medical decisions for themselves and encounter the other public health layers present to minimize vaccine-preventable diseases in our communities.

Implementation of Specific Vaccination Criteria

ACIP recommendations serve multifactorial purposes, including optimizing individual health status, protecting the public health of the Nation, and providing technical guidance for State-based mandates for school, child care, employment, and other settings. However, to date, the ACIP recommendations for the general U.S. population have been applied to aliens seeking admission into the United States without further consideration of the public health impact and need of these immunizations at the time of the medical examination for immigration. CDC believes specific public health criteria that focus on preventing infectious diseases that can cause outbreaks or are in the process of elimination should be used to determine which ACIP-recommended vaccinations for the U.S. population are appropriate to mandate for aliens seeking admission into the United States or seeking to adjust their status to that of lawful permanent resident at the time of the medical examination.

On April 8, 2009, CDC published a notice in the **Federal Register** seeking public comment on criteria CDC proposed to be used for these purposes. *See* 74 FR 15986. CDC proposed the following criteria:

1. The vaccine must be an age-appropriate vaccine, as recommended by ACIP for the general U.S. population, and

2. At least one of the following:

a. The vaccine must protect against a disease that has the potential to cause an outbreak.[5]

b. The vaccine must protect against a disease that has been eliminated in the United States, or is in the process for elimination in the United States.[6]

CDC received a total of forty (40) comments to the **Federal Register** notice, some of which contained multiple topics and some of which were the collaborative effort of multiple groups. Twenty-six comments were received regarding Human Papillomavirus (HPV) vaccine specifically, including two comments that suggested alternatives HHS/CDC could adopt if the HPV vaccine were not removed from the list as a result of the application of the adopted criteria. Twenty-four comments were received regarding HHS/CDC's current practice of requiring vaccines for the purpose of immigration. Nineteen comments were received that discussed the proposed criteria to be used in determining which vaccines recommended by ACIP for the U.S. population should be required for immigration purposes. Ten comments were received regarding the vaccine for the prevention of herpes zoster (zoster vaccine). Three comments were received regarding HHS/CDC's technical instructions. Finally, nine comments were received which were either outside the scope of the Notice or beyond the scope of HHS/CDC's mission. Below is

[3] CDC. Dowdle WR. The Principles of Disease Elimination and Eradication. MMWR Supplement 1999; 48(SU01):23–7.

[4] CDC. Update: Measles—United States, January–July 2008. MMWR, 22 August (2008) 57(33);893–896.

[5] For purposes of this Notice, ''outbreak'' means the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time.

[6] ''Elimination'' is the reduction to zero of the incidence of infection caused by a specific agent in a defined geographic area as a result of deliberate efforts; continued measures to prevent re-establishment of transmission are required.

a summary of public comments received and CDC's responses to those comments.

I. Comments Regarding the Current Process

One commenter noted that the current requirements work very well in practice and wondered what might be accomplished by a change.

Response: The current process for determining which vaccines should be required does not take into consideration the purpose of the medical examination for U.S. immigration, i.e., to prevent the importation of infectious diseases of public health significance. The change to the current process will allow for the necessary flexibility to identify vaccines from a growing list of vaccines against vaccine-preventable diseases with highest public health impact (as defined in the criteria) at the time of the medical examination.

Some commenters asserted that CDC's current practice of listing all ACIP vaccines in its technical instructions is too broad and inflexible, and likely to lead to unnecessary requirements that do not allow immigrant women to make an informed decision about whether to obtain certain recommended vaccines.

Response: The issue of consent is not a subject of this notice. Congress has mandated (with opportunity for medical/religious/moral waiver) that particular vaccines be received by immigrants and that other vaccines also be received by them based on ACIP recommendations. Therefore, beyond application of waivers, immigrants do not have discretion to choose which mandated vaccines to receive.

Some commenters wondered why certain vaccines are required for immigrants and not U.S. citizens. Other commenters incorrectly assumed that the **Federal Register** Notice and proposed criteria applied to refugees.

Response: Vaccination requirements for aliens seeking admission into the United States are based on the Immigration and Nationality Act (INA). Section 212(a)(1)(A)(ii) of the INA requires any person who seeks admission as an immigrant, or who seeks adjustment of status to that of an alien lawfully admitted for permanent residence to document proof of vaccination of having received vaccination against certain vaccine-preventable diseases as listed in the statute or recommended by ACIP. The vaccine requirements provided in the INA do not apply to U.S. citizens. Additionally, the current vaccination requirements apply to refugees only when they apply to adjust their status to lawful permanent resident, typically one year after arrival into the United States.

Several commenters expressed concern that the DHS waiver for moral convictions or religious reasons is an ineffective tool because waiving all vaccinations for an individual—instead of waiving particular vaccinations—results in a completely unvaccinated individual and, therefore, a threat to public health. Further, not all immigrants are aware that such a waiver exists, or it may not be an option for them because they previously received vaccines.

Response: This issue is outside the scope of the request for comments—HHS does not issue waivers with respect to immigrant vaccination mandates. This is a function carried out by DHS under its regulations.

II. Comments Regarding the Proposed Criteria

Some commenters agreed with the criteria and urged CDC to adopt them as proposed.

Response: CDC has adopted the criteria as proposed. Application of criteria to ACIP recommendations will begin thirty (30) days after publication of this Notice.

Some commenters expressed concern over the potential for an overly broad reading of proposed criterion 2b, which states: ''is in the process for elimination in the United States.'' These commenters suggested this text be narrowed to reflect an appropriate standard by which to evaluate the current and potential mandatory vaccinations for immigrants.

Response: CDC follows an accepted definition for elimination of infections that states: ''Elimination is the reduction to zero of the incidence of infection caused by a specific agent in a defined geographic area as a result of deliberate efforts; continued measures to prevent re-establishment of transmission are required.'' [7] Hence, in order to meet the criterion of an infection being in the process of elimination, deliberate efforts need to be in place for the elimination of infection, not merely the prevention of infection. CDC will rely on subject-matter experts, including national and international public health bodies such as the ACIP and the World Health Organization (WHO), to make such determinations. To date, only measles, polio, and rubella are considered to have been eliminated (or, in the case of polio, ''eradicated'') in the United States.

One commenter raised concern that ''potential to cause an outbreak,'' as defined in the April 8, 2009 **Federal Register** Notice, is vague and overly broad and could be used to make a specious case that it encompasses noninfectious diseases. HPV, which can lead to cancer, is currently the most common sexually transmitted disease in the United States, which could be interpreted as being ''an outbreak.'' This commenter suggested that the definition of outbreak should be narrowed to include the spread of disease through the respiratory route or common public contact, and should also reference the difficulty of containing the spread due to unavoidable exposure.

Response: CDC is adopting the language provided for in the **Federal Register** notice because it is widely established and accepted in public health. CDC recognizes that the mode of transmission itself does not define an outbreak potential. Similarly, as discussed in the Background section above, high prevalence in and of itself does not constitute an outbreak—in that it does not automatically mean there are ''more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time'' per the applied definition of an outbreak. For endemic diseases, an outbreak occurs when the incidence rises above the normal expected level. While HPV is a common infection, the occurrence of more cases than expected (as defined by an outbreak, discussed above) is not met. Further, HPV has not been eliminated, nor is in the process of elimination, in the United States. Therefore, because HPV does not meet the adopted criteria, it will not be a required vaccine for immigrant and adjustment of status to permanent residence applicants.

Some commenters rejected the proposed criteria and developed a list of vaccinations which should be required based upon their personal beliefs or practices.

Response: Commenters should be aware that not all vaccination requirements are subject to change as a result of the adoption of these criteria. For example, vaccinations are not required for any alien for whom a civil surgeon, medical officer, or panel physician certifies that the vaccination would not be medically appropriate or for whom the vaccination requirement would be contrary to religious beliefs or moral convictions, in accordance with regulations promulgated by DHS. Further, commenters should be aware

[7] CDC. Dowdle WR. The Principles of Disease Elimination and Eradication. MMWR Supplement 1999; 48(SU01):23–7.

that most adopted children 10 years of age or younger are not required to receive such vaccinations provided certain requirements are met. This includes a requirement that, prior to the admission of the child, an adoptive or prospective adoptive parent of the child who has sponsored the child for admission as an immediate relative must execute an affidavit stating that the parent is aware of the vaccination requirements and will ensure that the child receives the required vaccinations within 30 days of the child's admission, or earlier if medically appropriate.

III. Comments Regarding the HPV Vaccine

CDC received numerous comments both advocating for and against inclusion of HPV vaccine.

Response: CDC has applied the criteria and determined that once these criteria become effective December 14, 2009, the HPV vaccine will not be required for aliens seeking admission as an immigrant or seeking adjustment of status to that of an alien lawfully admitted for permanent residence. In reaching this decision, CDC applied the adopted criteria. Genital infection with HPV is an extremely common infection due to its efficient transmission via sexual intercourse. There are approximately 6 million incident infections occurring annually in the United States. Over half of sexually active men and women will develop HPV infection at some point in their lives and 15% of all Americans have current infection with HPV.[8] Even more individuals will have been infected previously in their lives.

Although millions of HPV infections occur annually, most are asymptomatic and resolve. About 10,000 cases of cervical cancer (the most important biologic outcome of HPV infection) develop annually in the United States. Because HPV infection is common in the general US population, is asymptomatic, and because it is not possible to distinguish infections which resolve spontaneously from those that result in cervical cancer, HPV is not the target of outbreak control. Rather a routine vaccination program is recommended to prevent infection. Similarly, HPV is not the target of a disease elimination campaign in the United States.

Therefore, while HPV may be an age-appropriate vaccine for an immigrant applicant, HPV neither causes outbreaks nor is it associated with outbreaks (per explanation in the background section). Further, HPV has not been eliminated, nor is in the process of elimination, in the United States. Therefore, because HPV does not meet the adopted criteria, it will not be a required vaccine for immigrant and adjustment of status to permanent residence applicants.

One commenter asked CDC to clarify if the phrase ''through 26 years of age,'' as written in the Technical Instructions for administration of the HPV vaccine, means ''past the age of 26 and up to 27,'' or ''up to the age of 26.''

Response: CDC clarifies that ''through 26 years of age'' means past the age of 26 and up to the 27th birthday.

IV. Comments Regarding Alternative Approaches

One commenter suggested that if, as a result of these published criteria, the HPV vaccine is not removed from the list of required vaccinations, aliens should be allowed to forego a required vaccination on the basis that it protects against a noninfectious disease. Further, that commenter asserted that there should be no charge or application for opting out of such vaccines, and the Attorney General should not have the discretion to deny aliens this option.

Response: As indicated above, when the newly adopted criteria become effective (30 days after publication of this Notice), the HPV vaccine will no longer be required for immigration purposes. For those vaccines mandated for immigration, the only basis for opting out is receipt of a medical, religious, or moral convictions waiver. Whether or not the Attorney General has the authority to require a fee or application as part of a waiver process for vaccinations, is beyond the scope of this Notice.

One commenter requested CDC to direct the ACIP to modify its recommendation to state that the HPV vaccination should not be mandated for immigrants.

Response: The nature of an advisory committee is to provide its independent, unfettered expertise and advice to the agency, as described in the committee's administrative charter. The agency does not mandate that it receive any particular advice.

One commenter urged CDC to direct the U.S. Citizenship and Immigration Services agency (USCIS) to suspend the HPV vaccination requirement for immigrants applying to adjust their immigration status or obtain visas for the United States.

Response: HHS/CDC has no authority to direct component agencies within DHS to take action. However, HHS/CDC has determined that the HPV vaccine does not meet the necessary elements of the proposed criteria and will no longer be required for immigration purposes once the criteria become effective (30 days after publication of this notice).

V. Comments Regarding the Zoster Vaccine

Several commenters opposed the requirement of Zoster vaccine based upon the proposed criteria, and further found the costs to immigrants and refugees for this vaccine to be prohibitive.

Response: Upon application of the criteria adopted in this final notice, CDC has determined that Zoster vaccine will no longer be required for immigration purposes once the criteria become effective (30 days after publication of this notice). In reaching this decision, CDC applied the adopted criteria. Varicella Zoster Virus (VZV) is an exclusively human pathogen that infects approximately 98% of the adult population in the United States.[9] Approximately 1 million new cases of Zoster occur in the United States annually and approximately one in three persons in the general population will develop zoster during their lifetime. These statistics alone indicate that VZV has neither been eliminated, nor is in the process of elimination in the United States.[10] Further, Zoster neither causes outbreaks nor is it associated with outbreaks of varicella: Its high prevalence in the U.S. is in keeping with the background rate of the disease (i.e., no more people than usual, or an unexpected group of people, have become ill with VZV in a given geographic area in the U.S. over a given period of time). Therefore, because Zoster does not meet the criteria, it will not be a required vaccine for immigrant and adjustment of status to permanent residence applicants.

VI. Comments Regarding Technical Instructions

One commenter requested that state immunization programs be notified of any change in vaccination requirements.

Response: Any changes in the vaccination requirements for immigrant visa and adjustment of status applicants are posted on the CDC and DHS (USCIS) Web sites. Thus, they are available to the public and all organizations (e.g.,

[8] Dunne EF, Unger ER, Sternberg M, *et al.* Prevalence of HPV infection among females in the United States. JAMA 2007;297(8):813–819.

[9] Kilgore PE, Kruszon-Moran D, Seward JF, et al. Varicella in Americans from NHANES III: implications for control through routine immunization. J Med Virol 2003;70 Suppl 1:S111–8.

[10] CDC. Prevention of herpes zoster: Recommendations of the Advisory Committee on Immunization Practices (ACIP). MMWR 2008;57(No. RR–5):1–30.

civil surgeons, health departments) involved in vaccination issues.

One commenter requested that the Technical Instructions be updated to reflect any change in vaccination requirements.

Response: The Technical Instructions are routinely revised to reflect needed changes (e.g., addition of new vaccines). Two key changes to the Technical Instructions are based on the adoption of the criteria in this **Federal Register** Notice, i.e., that neither the HPV nor Zoster vaccines be required as part of the medical examination. These changes, which become effective 30 days after publication of this notice, will be reflected in the revised Technical Instructions posted on the CDC Web site at *http://www.cdc.gov/ncidod/dq/technica.htm.*

One commenter suggested that the current Technical Instructions do not follow the ACIP recommendations and are confusing regarding the age-appropriate vaccinations and minimum intervals.

Response: The current Technical Instructions are based on age-appropriate vaccinations and minimum intervals of vaccine doses provided by the ACIP recommendations for the general population. The vaccine tables for children and adults based on the ACIP recommendations are located on CDC's Web site at the following Internet address: *http://www.cdc.gov/vaccines/recs/schedules/.*

One commenter requested that the Technical Instructions be reviewed (if not written) by the National Center for Immunization and Respiratory Diseases (NCIRD) staff who are very familiar with immunizations.

Response: The Technical Instructions are developed in coordination with numerous components of CDC, including NCIRD and other programs with expertise in immunization matters. Following their development, the Technical Instructions then undergo official agency clearance, which also includes review by relevant components of the agency. Ultimately, the Technical Instructions are published by CDC's Division of Global Migration and Quarantine (DGMQ), which is the component of CDC responsible for administering them for use by civil surgeons and panel physicians.

VII. Miscellaneous Comments

One commenter called attention to the incorrect deadline for submission of comments which was originally posted in the **Federal Register** Notice.

Response: CDC appreciates this comment and had already made changes to the original notice and published the corrected date on April 20, 2009 in the **Federal Register** (74 FR 17966) to accurately reflect 30 days after the April 8, 2009, publication.

Another commenter urged the CDC to halt all immigration to the United States, thus making the vaccination issue moot.

Response: Immigration laws are promulgated by the U.S. Congress and implemented by DHS. While CDC administers regulations describing medical examinations that aliens must undergo, as described above, CDC has no authority over immigration matters.

Commenters requested that all people immigrating to the United States receive all available vaccinations to protect the U.S. public health.

Response: The current vaccination requirements are based on the Immigration and Nationality Act, which requires any person who seeks an immigrant visa or who applies for adjustment of status to lawful permanent resident to have certain specified vaccines, as well as those recommended by ACIP. CDC has adopted criteria for determining which of the vaccinations recommended by ACIP are appropriate for the immigration population, in order to take into consideration the highest public health impact as defined in the criteria at the time of the medical examination for U.S. immigration.

One commenter suggested that, rather than seek public comment on which vaccinations should be required for immigration purposes, CDC should focus on the connection between vaccines and autism.

Response: HHS has a statutory obligation to describe medical examinations certain aliens must undergo. This responsibility has been delegated to CDC/DGMQ. This notice is being implemented under that authority. While HHS/CDC does work on the subject of autism, it is outside the scope of this notice.

VIII. Final Action

After consideration of public comments received through this notice, as well as those received during an ACIP meeting held at CDC February 25–26, 2009, CDC is adopting the criteria as proposed and will begin applying the criteria to determine which vaccines recommended by ACIP for the general U.S. population will be required (in addition to those statutorily mandated) for immigrants in accordance with section 212(a)(1)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. 1182(a)(1)(A)(ii)). The current vaccine tables for children and adults based on the ACIP recommendations for the U.S. population are located on CDC's Web site at: *http://www.cdc.gov/vaccines/recs/schedules/.*

The criteria that CDC is adopting today and will apply 30 days after publication of this notice are as follows:

1. The vaccine must be an age-appropriate vaccine as recommended by the ACIP for the general U.S. population, and

2. At least one of the following:

a. The vaccine must protect against a disease that has the potential to cause an outbreak.[11]

b. The vaccine must protect against a disease that has been eliminated in the United States or is in the process for elimination in the United States.[12]

The updated vaccination requirements will be listed in the Technical Instructions (see *http://www.cdc.gov/ncidod/dq/technica.htm*) and will become effective 30 days after publication of this notice. CDC will continue to require the vaccinations explicitly referenced in section 212(a)(1)(A)(ii): Mumps, measles, rubella, polio, Tetanus and diphtheria toxoids, pertussis, Haemophilus influenzae type B and hepatitis B). All vaccines will remain subject to statutory waivers, if applicable. CDC will periodically review the list of vaccines recommended by ACIP for the general U.S. population to determine whether additional vaccinations fall within CDC's recommended criteria. Any changes to the list of required vaccines, which result from an application of these criteria, will be reflected in CDC's Technical Instructions, available to the public at *http://www.cdc.gov/ncidod/dq/technica.htm*). If there is a future need for CDC to reconsider these established criteria, CDC will solicit comments through publication in the **Federal Register.**

Dated: November 6, 2009.

Anne Haddix,

Chief Policy Officer, CDC, OSI.

[FR Doc. E9–27317 Filed 11–12–09; 8:45 am]

BILLING CODE 4163–18–P

[11] For purposes of this Notice, an ''outbreak'' means the occurrence of more cases of disease than could be anticipated in a given area or among a specific group of people over a particular period of time.

[12] ''Elimination'' is the reduction to zero of the incidence of infection caused by a specific agent in a defined geographic area as a result of deliberate efforts; continued measures to prevent re-establishment of transmission are required.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0292]

Michelle Lynn Torgerson; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) (the agency) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Michelle Lynn Torgerson, from providing services in any capacity to a person that has an approved or pending drug product application. We base this order on a finding that Ms. Torgerson was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Ms. Torgerson was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of October 26, 2009, Ms. Torgerson has failed to respond. Ms. Torgerson's failure to respond constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective November 13, 2009.

ADDRESSES: Submit applications for special 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: Kenny Shade, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 240–632–6844.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct otherwise relating to the regulation of any drug product under the act.

On January 4, 2006, the U.S. District Court for the District of Minnesota entered judgment against Michelle L. Torgerson for one count of misbranding a drug, a federal felony offense under sections 301(k), 303(a)(2), and 352(b)(1) (21 U.S.C. 331(k), 333(a)(2), and 353(b)(1)), after accepting her guilty plea on May 19, 2005. This offense was committed when Michelle L. Torgerson was employed as a nurse by Maxim Health Systems in the State of Minnesota. During that time, Ms. Torgerson conducted unauthorized flu vaccination clinics on the campus of Augsburg College, without the approval of her employer, Maxim Health Systems. Ms. Torgerson also falsely represented that the American Heart Association was sponsoring or otherwise authorizing the clinics. Michelle L. Torgerson acknowledged that, in conducting the unauthorized clinics, she acted with the intent to defraud and mislead the public and that she caused a quantity of a prescription drug, namely, the flu virus vaccine Fluzone®, to be misbranded within the meaning of 21 U.S.C. 353(b)(1), while the flu virus vaccine was being held for sale after being shipped in interstate commerce. Specifically, Ms. Torgerson acknowledged that she dispensed the flu virus vaccine without a written prescription of a practitioner licensed by law to administer the flu virus vaccine. Ms. Torgerson knew that, as a Licensed Practical Nurse, she was not authorized to dispense the flu virus vaccine without a physician's orders. She also acknowledged that she diluted some of the vaccine with saline knowing that this would reduce the flu vaccine's quality and strength.

As a result of this conviction, FDA sent Ms. Torgerson by certified mail on August 7, 2009, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on a finding, under section 306(a)(2)(B) of the act that Michelle L. Torgerson was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. The proposal also offered Ms. Torgerson an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Ms. Torgerson failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Acting Director, Office of Enforcement, Office of Regulatory Affairs, under section 306(a)(2)(B) of the act, and under authority delegated to the Acting Director (Staff Manual Guide 1410.35), finds that Michelle L. Torgerson has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act.

As a result of the foregoing finding, Ms. Torgerson is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application 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), effective (see **DATES**) (see sections 306(c)(1)(B), 306(c)(2)(A)(ii), and 201(dd) of the act (21 U.S.C.321(dd)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Michelle L. Torgerson, in any capacity, during Ms. Torgerson'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. Torgerson, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she 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. Torgerson during her period of debarment (section 306(c)(1)(B) of the act).

Any application by Ms. Torgerson for special termination of debarment under section 306(d)(4) of the act should be identified with Docket No. FDA–2009–N–0292 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. 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.

Dated: October 28, 2009.

Brenda Holman,

Acting Director, Office of Enforcement, Office of Regulatory Affairs.

[FR Doc. E9–27223 Filed 11–12–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0488]

Medical Devices: Ophthalmic Devices; Laser-Assisted In Situ Keratomileusis (LASIK) Devices; Reopening of the Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the reopening until November 15, 2010 of a public docket to receive information and comments on laser-assisted in situ keratomileusis (LASIK) devices.

DATES: The agency encourages interested parties to submit information and comments by November 15, 2010.

ADDRESSES: Submit electronic comments or information to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Domini Bean, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., WO66 Rm. 4422, Silver Spring, MD 20993, 301–796–5733, e-mail: *domini.bean@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 12, 2008 (73 FR 53028), FDA published a notice announcing the opening of a public docket to receive information and comments on the post market experience associated with the use of laser-assisted in situ keratomileusis (LASIK) devices, as well as information regarding potential barriers that may exist in providing the agency with feedback regarding LASIK procedures. Interested persons were invited to submit comments by September 14, 2009. At this time, the agency is reopening the docket to continue to receive public comments. Information and comments submitted to the docket will assist us in identifying ways in which we can improve our public outreach efforts regarding the safety and effectiveness of LASIK devices.

II. Submission of Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. All comments submitted to the public docket are public information and may be posted to the FDA's Web site at *http://www.fda.gov* for public viewing. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 2009.

Jeffrey Shuren,

Acting Director, Center for Devices and Radiological Health.

[FR Doc. E9–27222 Filed 11–12–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences, Special Emphasis Panel K99 Pathway to Independence.

Date: December 7–8, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Meredith D. Temple-O'Connor, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2772, *templeocm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: November 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27172 Filed 11–12–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of The Director, National Institutes of Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Council of Councils, November 16, 2009, 9 a.m. to November 17, 2009, 12 p.m., National Institutes of Health, Building 31C, 31 Center Drive, Conference Room 6, Bethesda, MD, 20892 which was published in the **Federal Register** on October 8, 2009, 74 FR 51869.

This meeting will be held on November 16, 2009 for one day only. The meeting is open to the public.

Dated: November 05, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–27173 Filed 11–12–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–87]

Request for Approval of Advance of Escrow Funds

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department requires mortgagors/borrowers and mortgagee/Lenders to execute a Building Loan Agreement setting forth terms and conditions under which progress payments may be advanced during project construction. The Agreement is executed before initial endorsement of mortgage insurance. HUD–92464 is a document used for

assurance of completion for escrowed funds.

DATES: *Comments Due Date: December 14, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0018) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the

Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Request for Approval of Advance of Escrow Funds.

OMB Approval Number: 2502–0018.

Form Numbers: HUD–92464.

Description of the Need for the Information and Its Proposed Use: The Department requires mortgagors/borrowers and mortgagee/Lenders to execute a Building Loan Agreement setting forth terms and conditions under which progress payments may be advanced during project construction. The Agreement is executed before initial endorsement of mortgage insurance. HUD–92464 is a document used for assurance of completion for escrowed funds.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	936	2		1		1,872

Total Estimated Burden Hours: 1,872.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27229 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–88]

Direct Endorsement Underwriter/HUD Reviewer-Analysis of Appraisal Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information collection is used to capture information on appraisal reports considered deficient by the underwriter, and to document efforts to resolve any discrepancies. The basic respondents are lender underwriters.

DATES: *Comments Due Date: December 14, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0477) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Direct Endorsement Underwriter/HUD Reviewer-Analysis of Appraisal Report.

OMB Approval Number: 2502–0477.

Form Numbers: HUD–54114.

Description of the Need for the Information and Its Proposed Use: The information collection is used to capture information on appraisal reports considered deficient by the underwriter, and to document efforts to resolve any discrepancies. The basic respondents are lender underwriters.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	558,319	1		0.0500		27,916

Total Estimated Burden Hours: 27,916.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27228 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–89]

Debt Resolution Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s). In response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and pre-authorized electronic payments to HUD. Borrowers who wish to dispute must provide information to support their position.

DATES: *Comments Due Date:* December 14, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0483) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Debt Resolution Program.

OMB Approval Number: 2502–0483.

Form Numbers: HUD–56141, HUD–56142, HUD–56146 and HUD–92090.

Description of the Need for the Information and Its Proposed Use:

HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s). In response, debtors opt to ignore the debt, pay the debt or dispute the debt. Disputes and offers to repay the debt result in information collections. Borrowers who wish to pay less than the full amount due must submit a Personal Financial Statement Offer. HUD uses the information to analyze debtors' financial positions and then approve settlements, repayment agreements, and pre-authorized electronic payments to HUD. Borrowers who wish to dispute must provide information to support their position.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	850	3.28		0.304		854

Total Estimated Burden Hours: 854.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27227 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–90]

Technical Processing Requirements for Multifamily Project Mortgage Insurance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected form mortgagees, mortgagors, contractors, and attorneys for the purpose of obtaining multifamily mortgage insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the ability to manage the development, construction, completion, and successful lease-up of the proposed property.

DATES: *Comments Due Date: December 14, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0500) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Technical Processing Requirements for Multifamily Project Mortgage Insurance.

OMB Approval Number: 2502–0500.

Form Numbers: HUD–2415, HUD–2456, HUD–92466, HUD–2283, FHA–2455, FHA–1710, HUD–92433, HUD–92450, HUD–92443, FHA–2459 HUD–3305, HUD–3306, HUD–92403.1

Description of the Need for the Information and Its Proposed Use: This information is collected form mortgagees, mortgagors, contractors, and attorneys for the purpose of obtaining multifamily mortgage insurance for new or rehabilitated housing. The information collected is used to determine if key principals are acceptable and have the ability to manage the development, construction, completion, and successful lease-up of the proposed property.

Frequency of Submission: Other required with each project application.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	9,250	1		1.194		11,050

Total Estimated Burden Hours: 11,050.

Status: Reinstatement, with change, of prevision of approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27226 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–91]

Standardized Form for ''Race and Ethnic Data Collection''

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

All HUD program offices use this form when collecting information concerning the race and ethnicity of the populations intended to benefit from HUD funding as required by Title VI of the Civil Rights Act of 1964.

DATES: *Comments Due Date: December 14, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0113) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Standardized form for ''Race and Ethnic Data Collection''.

OMB Approval Number: 2535–0113.

Form Numbers: HUD–27061.

Description of the Need for the Information and Its Proposed Use: All HUD program offices use this form when collecting information concerning the race and ethnicity of the populations intended to benefit from HUD funding as required by Title VI of the Civil Rights Act of 1964.

Frequency of Submission: On occasion, quarterly, annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	1	1		1		1

Total Estimated Burden Hours: 1

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27225 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–92]

Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is collected from developers, borrowers, sponsors, or project managers. Summaries from this report enable HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The information is used for the Department's annual report.

DATES: *Comments Due Date: December 14, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2535–0117) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–5806.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the

Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (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; (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 collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Contract and Subcontract Activity Reporting on Minority Business Enterprise (MBE).

OMB Approval Number: 2535–0117.

Form Numbers: HUD–2516.

Description of the Need for the Information and Its Proposed Use: The information is collected from developers, borrowers, sponsors, or project managers. Summaries from this report enable HUD to monitor and evaluate progress toward designated Minority Business Enterprise (MBE) goals of Executive Order 12432. The information is used for the Department's annual report.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours of response	=	Burden hours
Reporting Burden	5,901	1		1		5,901

Total Estimated Burden Hours: 5,901.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: November 5, 2009.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E9–27224 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–43]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.DC).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St., SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave, SW., Washington, DC 20585: (202) 586–5422; *GSA:* Mr. Gordon Creed, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305. (These are not toll-free numbers).

Dated: October 29, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 11/06/2009

Suitable/Available Properties

Building

Montana

Bldg. 743
Glacier National Park
West Glacier MT 59921
Landholding Agency: GSA
Property Number: 54200940005
Status: Surplus
GSA Number: 7–I–MT–0544–AB
Comments: 678 sq. ft., most recent use—dormitory, off-site use only

Bldg. 744
Glacier National Park
West Glacier MT 59936
Landholding Agency: GSA
Property Number: 54200940006
Status: Surplus
GSA Number: 7–I–MT–0544AA
Comments: 1812 sq. ft., most recent use—dormitory, off-site use only

Suitable/Available Properties

Land

Missouri

Tract LLWAS K3
Mexico City Ave.
Kansas City MO 64153
Landholding Agency: GSA
Property Number: 54200940004
Status: Surplus
GSA Number: 7–U–MO–0687AA
Comments: 0.034 w/easements

Unsuitable Properties

Building

Guam

9 Bldgs.
Naval Base
Piti GU
Landholding Agency: Navy
Property Number: 77200940006
Status: Unutilized
Directions: 92, 204, 211NH, 292, 453, 454, 4407PP, 5120, 5125
Reasons: Extensive deterioration Secured Area

Hawaii

Kauhola Point Lighthouse
Kauhola Point HI
Landholding Agency: Coast Guard
Property Number: 88200940001
Status: Unutilized
Reasons: Extensive deterioration

New Mexico

13 Bldgs.
Los Alamos National Lab

Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200940004
Status: Unutilized
Directions: 54–0306, 54–0315, 54–0324, 54–0325, 54–1058, 54–0296, 54–0304, 54–0367, 54–0483, 54–1027, 54–1028, 54–1030, 54–1041
Reasons: Extensive deterioration Secured Area

[FR Doc. E9–27419 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–44]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date: November 13, 2009.*

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 5, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–27096 Filed 11–12–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0119

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR 874.16—contractor eligibility, and the Abandoned Mine Land Contractor Information Form has been forwarded to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: Comments must be submitted on or before December 14, 2009, to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRADocket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 10290119 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeepinq activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information for 30 CFR 874.16, and the AML Contractor Information Form which is found in the Applicant/Violator System (AVS) handbook. OSM is requesting a 3-year term of approval for this collection.

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 number for this collection of information is 1029–0119. Responses are required to obtain a benefit.

As required by 5 CFR 1320.8(d), a Federal Register notice soliciting comments on this collection of information was published on July 17, 2009 (74 FR 34774). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

SUMMARY: 30 CFR 874.16 requires that every successful bidder for an AML contract must be eligible under 30 CFR 77315(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Further, the regulation requires the eligibility to be confirmed by OSM's automated Applicant/Violator System (AVS) and the contractor must be eligible under the regulations implementing Section 510(c) of the Surface Mining Act to receive permits to conduct mining operations. This form provides a tool for OSM and the States/Indian tribes to help them prevent persons with outstanding violations from conducting further mining or AML reclamation activities in the State.

Title: 30 CFR 874.16—Contractor Eligibility and the Abandoned Mine Land Contractor Information Form.

OMB Control Number: 1029–0119.

Bureau Form Title: AML Contractor Information Form (No form number).

Frequency of Collection: Once per contract.

Description of Respondents: AML contract applicants and State and Tribal regulatory authorities.

Total Annual Responses: 337 bidders and 16 State/Tribal responses.

Total Annual Burden Hours: 136.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your

comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 4, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–27175 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0098

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing that the information collection request for 30 CFR part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations, has been submitted to the Office of Management and Budget (OMB) for review and approval. The information collection request describes the nature of the information collection and its expected burden and cost.

DATES: Comments must be submitted on or before December 14, 2009, to be assured of consideration.

ADDRESSES: Comments may be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Department of the Interior Desk Officer, via e-mail at *OIRADocket@omb.eop.gov,* or by facsimile to (202) 395–5806. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 202–SIB, Washington, DC 20240, or electronically to *jtrelease@osmre.gov.* Please reference 10290098 in your correspondence.

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, contact John Trelease at (202) 208–2783. You may also contact Mr. Trelease by e-mail at *jtrelease@osmre.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. OSM has submitted a request to OMB to renew its approval for the collection of information found at 30 CFR part 769—Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations. OSM is requesting a 3-year term of approval for this collection. This collection is required to obtain or retain a benefit.

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 number for this collection of information is 1029–0098.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on this collection of information was published on August 13, 2009 (74 FR 40834). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OMB Control Number: 1029–0098.

Summary: This part establishes the minimum procedures and standards for designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decisionmaking process to approve or disapprove a request.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: People who may be adversely affected by surface mining on Federal lands.

Total Annual Responses: 1.

Total Annual Burden Hours: 1,000.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the offices listed in the **ADDRESSES** section. Please refer to the appropriate OMB control number in all correspondence.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: October 21, 2009.

John R. Craynon,

Chief, Division of Regulatory Support.

[FR Doc. E9–27176 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–169–1610DP–025B]

Notice of Availability of Carrizo Plain National Monument Proposed Resource Management Plan and Final Environmental Impact Statement, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA) and the Federal Land Policy and Management Act of 1976 (FLPMA), the Bureau of Land Management (BLM) has prepared a Proposed Resource Management Plan/Final Environmental Impact Statement (PRMP/FEIS) for the Carrizo Plain National Monument (CPNM).

DATES: BLM planning regulations at 43 CFR 1610.5–2 state that any person who meets the conditions as described in the regulations may protest BLM's PRMP. A person who meets the conditions and files a protest must file the protest within 30 days of the date that the Environmental Protection Agency publishes this notice in the **Federal Register.**

ADDRESSES: Copies of the CPNM PRMP/FEIS have been sent to affected Federal, State, and local government agencies, Native American tribes, and to interested parties. Copies of the CPNM PRMP/FEIS are available for public

inspection at BLM's Bakersfield Field Office (3801 Pegasus Drive, Bakersfield, CA 93308) and the California State Office (2800 Cottage Way, Sacramento, CA 95825). Interested persons may also review the CPNM PRMP/FEIS at the following Web site: *http://www.blm.gov/ca/bakersfield*. All protests must be in writing and mailed to the following addresses:

Regular Mail (U.S. Postal Service): Director (210), Attention: Brenda Williams, P.O. Box 66538, Washington, DC 20035.

Overnight Mail (non-U.S. Postal Service): Director (210), Attention: Brenda Williams, 1620 L Street, NW., Suite 1075, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Johna Hurl, Carrizo Plain National Monument Manager, 3801 Pegasus Drive, Bakersfield, CA 93308, (661) 391–6093.

SUPPLEMENTARY INFORMATION: The planning area for the CPNM PRMP/FEIS falls within the Bakersfield Field Office's area of management responsibility. The planning area comprises the Carrizo Plain National Monument. A total of 200,000 acres of public lands are administered by the BLM in the planning area.

The decisions in the RMP will only apply to the BLM-administered public lands and mineral estate within the planning area.

Comments on the Draft RMP/EIS received from the public and internal BLM review were considered and incorporated, as appropriate, into the PRMP. Public comments resulted in the addition of clarifying text and several changes to the decisions contained in the PRMP, including adding lands to be managed for Wilderness characteristics and limiting vehicle use on monument roads to street licensed vehicles only. However, these comments did not result in significant changes to the decisions in the PRMP. Instructions for filing a protest with the Director of the BLM regarding this plan may be found in the Dear Reader Letter of the CPNM PRMP/FEIS and at 43 CFR 1610.5–2. E-mail and faxed protests will not be accepted as valid protests unless the protesting party also provides the original letter by either regular or overnight mail postmarked by the close of the protest period. If these conditions are met, the BLM will consider the e-mail or faxed protest as an advance copy and it will receive full consideration. If you wish to provide the BLM with such advance notification, please direct faxed protests to the attention of the BLM protest coordinator at 202–452–5112, and e-mails to *Brenda_Hudgens-Williams@blm.gov.*

All protests, including the follow-up letter (if e-mailing or faxing), must be in writing and mailed to the appropriate address, as set forth in the **ADDRESSES** section above.

Timothy Z. Smith,

Bakersfield Field Manager.

[FR Doc. E9–27323 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVL00000.L51100000. GN0000.LVEMCF050000; 09–08807; TAS: 14X5017]

Final Environmental Impact Statement for the Bald Mountain Mine North Operations Area Project in White Pine County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) Nevada Ely District has prepared a Final Environmental Impact Statement (EIS) for a proposed expansion of the existing plans of operation for Barrick Gold U.S. Inc.'s Bald Mountain Mine and Mooney Basin Mine. The two existing mines would be combined into one new expanded operation which would be called the North Operations Area. The Final EIS analyzes the environmental effects of the Proposed Action, two action alternatives, and the No Action Alternative.

DATES: The BLM will not issue a final decision on the proposal for a minimum of 30 days following the Environmental Protection Agency's publication of a Notice of Availability of the Final EIS in the **Federal Register.**

ADDRESSES: Print and compact disk copies of the North Operations Area Final EIS are available in the Ely District Office at 702 North Industrial Way, HC33 Box 33500, Ely, NV 89301. The document is available at: *http://www.blm.gov/nv/st/en/fo/ely_field_office.html.*

FOR FURTHER INFORMATION CONTACT: Lynn Bjorklund, *phone:* 775 289–1893, *e-mail: Lynn_Bjorklund@blm.gov.*

SUPPLEMENTARY INFORMATION: Barrick Gold U.S. Inc. has submitted a proposal to expand and combine its existing Bald Mountain and Mooney Basin mines into one project area to be administered under the North Operations Area Plan of Operation. The mines are located approximately 65 miles northwest of Ely, Nevada. This proposed expansion is entirely on unpatented mining claims on BLM-administered public land. The proposed North Operations Area would include 4,160 acres of previously permitted disturbance and 3,920 acres of new disturbance, for a total of 8,080 acres. The project would consist of extending existing open pits, expanding existing rock disposal areas and heap leach facilities, construction of a truck shop, additional exploration, concurrent reclamation, and continuing operation of existing facilities. The projected life of the existing mine operation would increase by approximately ten years under this proposed project.

The Draft EIS analyzed the Proposed Action and two action alternatives. The alternatives were a partial pit backfill and a leach pad alternative whereby the expansion of the Mooney Basin leach pad would be reduced by processing the ore at the existing Bald Mountain leach pad. Both the BLM and the Nevada Department of Wildlife have designated the partial pit backfill as the Preferred Alternative.

The Draft EIS was released for public review on December 19, 2008. Public meetings were held in Nevada during a 45-day public comment period in Ely, Elko, and Eureka, Jan. 6–8, 2009. A total of 17 comment letters were received throughout the comment period. All comments were analyzed and appropriate changes or clarifications were incorporated into the Final EIS. The BLM will prepare a Record of Decision for the proposed project no earlier than 30 days following the publication of the Notice of Availability by the Environmental Protection Agency of the Final EIS.

Authority: 43 CFR part 3809.

Jeffrey A. Weeks,

Associate District Manager.

[FR Doc. E9–27325 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed New Central Valley Project Water Service Contract, El Dorado County Water Agency, El Dorado County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Reopening of comment period for review of the Draft Environmental

Impact Statement/Environmental Impact Report (EIS/EIR).

SUMMARY: The Bureau of Reclamation is reopening the comment period for the Draft EIS/EIR to December 31, 2009. The notice of availability of the Draft EIS/EIR was published in the **Federal Register** on August 17, 2009 (74 FR 41453). The public review period ended on Friday October 16, 2009.

DATES: Written comments on the Draft EIS/EIR will be accepted on or before December 31, 2009.

ADDRESSES: Send written comments on the Draft EIS/EIR to Ms. Elizabeth Dyer, Bureau of Reclamation, 7794 Folsom Dam Road, Folsom, California 95630. Copies of the Draft EIS/EIR may be requested from Ms. Dyer at the above address, or by calling 916–989–7256. *See* **SUPPLEMENTARY INFORMATION** section for locations where copies of the Draft EIS/EIR are available for public inspection. The Draft EIR/EIS is also available from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=26.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Dyer, Natural Resources Specialist, Reclamation, at 916–989–7256, *elizabethdyer@usbr.gov;* or Tracey Eden-Bishop, Water Resources Engineer, El Dorado County Water Agency, 530–621–5392, *tracey.eden-bishop@edcgov.us.*

SUPPLEMENTARY INFORMATION: The focus of the Draft EIS/EIR is to evaluate the potential environmental and socio-economic impacts of the new Central Valley Project (CVP) water service contract authorized under Public Law 101–514. At the project-level, the EIS/EIR addresses the potential hydrologic changes to the American River basin and the CVP/State Water Project including the Sacramento-San Joaquin River Delta. At the programmatic level, the EIS/EIR addresses potential long-term effects and indirect effects of this new water contract within the context of existing policies, infrastructure, public services, and population demographics as supported by the El Dorado County General Plan and EIR. Since no new facilities or infrastructure are part of this new CVP water contracting action, no direct impacts of this new water contract are included in the analysis.

Copies of the Draft EIS/EIR are available for public inspection and review at the following locations:

- Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; *telephone:* 303–445–2072.
- Bureau of Reclamation, Office of Public Affairs, 2800 Cottage Way, Sacramento, CA 95825–1898; *telephone:* 916–978–5100.
- Natural Resources Library, U.S. Department of the Interior, 1849 C Street, NW., Main Interior Building, Washington, DC 20240–0001.
- Bureau of Reclamation, Central California Area Office, 7794 Folsom Dam Road, Folsom, CA 95630.
- El Dorado County Water Agency, 3932 Ponderosa Road, Suite 200, Shingle Springs, CA 95682.
- Georgetown Branch Library, 6680 Orleans Street, P.O. Box 55, Georgetown, CA 95634.

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: November 2, 2009.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. E9–27285 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item: The Oregon Historical Society, Portland, OR

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item in the control of The Oregon Historical Society (Society), Portland, OR, that meets the definition of ''unassociated funerary object'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural item. The National Park Service is not responsible for the determinations in this notice.

The object is a Jefferson Peace Medal, dated 1801 (#84–84) (the ''Medal''). It is 5.5 cm in diameter and constructed of two pieces of silver fastened together with a collar. On the obverse is a likeness of President Thomas Jefferson with the legend, ''Th. Jefferson President of the U.S. A.D. 1801''. On the reverse are clasped hands, a crossed tomahawk and peace pipe, and the words ''Peace and Friendship''. The Medal has a hole and crack running vertically across the face, affecting both sides.

The Medal was given by Major Edwin McNeill to Winslow B. Ayer. Ayer was appointed Assistant Secretary of the Society on December 31, 1898, and presented the Medal to the Society on June 17, 1899. The Society accepted the Medal and recorded the donation (Himes, circa 1910). The Society adopted an intact version of the verso design of the Jefferson Peace Medal series as the Society's corporate seal.

The Confederated Tribes of the Umatilla Indian Reservation, Oregon, has made a claim for the Medal under NAGPRA, stating their belief that the Medal is an unassociated funerary object from a grave located on an island in the Columbia River, at or near the mouth of the Walla Walla River. Available information concerning the original provenience of the Medal is limited and conflicting. One early account states that the Medal was found on the Nez Perce Indian Reservation (OHS Proceedings, 1899). This account makes no reference to the specific location of the discovery beyond the Nez Perce Indian Reservation or the identity of the person who collected it. Another later, more detailed account indicates that the Medal was found on an island in the Columbia River near Wallula, WA. This account does not identify a specific island, and makes no mention of any graves in the area. Representatives of the Confederated Tribes of the Umatilla Indian Reservation have stated that various documented accounts demonstrate that islands in the Columbia River were used for burials.

Available information indicates that Meriwether Lewis and William Clark presented Jefferson Peace Medals to major and minor chiefs along their overland journey to the Pacific Coast. Lewis and Clark both mentioned in their journals that at least four medals of the same dimensions as the Society's Medal were given in friendship to the local tribes in the vicinity of present-day Wallula, WA, during their expedition between October 15 and October 20, 1805, and during the return voyage between April 27 and April 30, 1806. One such medal was presented to a Walla Walla chief named Yelleppit or Yelépt on October 19, 1805, while Lewis

and Clark were at their camp at the mouth of the Walla Walla River, on the Columbia River. Since one account indicates that the Medal was found on an island in the Columbia River in the vicinity of present-day Wallula, WA, and the Confederated Tribes of the Umatilla Indian Reservation has stated that various islands in the Columbia River were used as burial sites by the Walla Walla, the Medal could have been interred with the body of Chief Yelépt or another unnamed Chief of the Walla Walla Tribe. Therefore, the Medal may be an unassociated funerary object. No other tribal group in the region has expressed an interest in obtaining this Medal. The Society has determined that it would be appropriate to transfer possession of the Medal to the Confederated Tribes of the Umatilla Indian Reservation.

Based on the recorded discovery site and consultation with representatives of the Confederated Tribes of the Umatilla Indian Reservation, officials of the Oregon Historical Society reasonably believe that the Medal is an unassociated funerary object, pursuant to 25 U.S.C. 3001 (3)(B). Officials of the Oregon Historical Society also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary object and the Confederated Tribes of the Umatilla Indian Reservation, Oregon.

Representatives of any Indian Tribe that believes that the Medal is a cultural item affiliated with that Tribe should contact Marsha Takayanagi Matthews, Director of Museum Collections, The Oregon Historical Society, 1200 S.W. Park Ave., Portland, OR 97205–2483, telephone (503) 306–5200, before December 14, 2009. Repatriation of the Medal to the Confederated Tribes of the Umatilla Indian Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Society is responsible for notifying the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; and the Nez Perce Tribe, Idaho that this notice has been published.

Dated: October 22, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–27235 Filed 11–12–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Riverside Metropolitan Museum, Riverside, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession and control of the Riverside Metropolitan Museum, Riverside, CA. The human remains and associated funerary objects were removed from Sacramento County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Riverside Metropolitan Museum professional staff in consultation with the Buena Vista Rancheria of Me-wuk Indians of California; California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California); Chicken Ranch Rancheria of Me-wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California.

In 1933, human remains representing a minimum of 27 individuals were removed from the Augustine Mound, in the Cosumnes River area, south of Elk Grove, Sacramento County, CA, during excavations by Dr. Paul Walker in association with the Sacramento City College. Walker's widow, Bessie Walker, donated the human remains to the Riverside Metropolitan Museum in 1959. No known individuals were identified. The 29 associated funerary objects are 1 lot of glass beads, 1 lot of stone and bone objects, 3 antler flaking tools, 1 deer scapula saw, 1 bone scraper, 1 bone fish hook, 4 bone awls, 4 bone earlobe tubes, 1 steatite awl fragment, 1 stone polisher, 1 lot of clay objects, 1 stone pestle, 2 projectile points, 2 obsidian tools, 1 lot of obsidian lithics, 1 lot of shell pieces, 1 lot of shell beads, 1 lot of carbonized textiles, and 1 brass button.

Traditionally, the Plains Miwok occupied an area that included the lower reaches of the Mokelumne and Cosumnes Rivers, and both banks of the Sacramento River from Rio Vista to Freeport (*Handbook of North American Indians*, Vol. 8, 1978), which includes the Augustine Mound. The Plains Miwok are represented today by the Buena Vista Band of Me-Wuk Indians and the Ione Band of Miwok Indians. Consultation evidence provided by the Ione Band of Miwok links them prehistorically to the Slough House, Cosumnes River area. Moreover, many Base Roll Members of the Ione Band of Miwok served as informants for the Augustine Mound site. The Camellia Cemetery on Jackson Highway 16, where the human remains and associated funerary objects will be repatriated, is six miles from Slough House, where the human remains and associated funerary objects originated. Based on ethnography and consultation with the Ione Band of Miwok Indians of California, it has been determined that Slough House in the Cosumnes River area, south of Elk Grove, CA, is within the historically documented territory of the Plains Miwok.

Officials of the Riverside Metropolitan Museum have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of 27 individuals of Native American ancestry. Officials of the Riverside Metropolitan Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 29 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Riverside Metropolitan Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Buena Vista Rancheria of Me-wuk Indians of California and the Ione Band of Miwok Indians of California. Lastly, officials of the Riverside Metropolitan Museum have determined that there is a preponderance of the evidence in favor of the Ione Band of Miwok Indians of California's claim.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and

associated funerary objects should contact Ennette Morton, Museum Director, Riverside Metropolitan Museum, 3580 Mission Inn Avenue, Riverside, CA 92501, telephone (951) 826–5128, before December 14, 2009. Repatriation of the human remains and associated funerary objects to the Ione Band of Miwok Indians of California may proceed after that date if no additional claimants come forward.

The Riverside Metropolitan Museum is responsible for notifying the Buena Vista Rancheria of Me-wuk Indians of California; California Valley Miwok Tribe, California; Chicken Ranch Rancheria of Me-wuk Indians of California; Ione Band of Miwok Indians of California; Jackson Rancheria of Me-wuk Indians of California; Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California; Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California; and United Auburn Indian Community of the Auburn Rancheria of California that this notice has been published.

Dated: October 15, 2009.

Richard C. Waldbauer,

Acting Manager, National NAGPRA Program.

[FR Doc. E9–27237 Filed 11–12–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, National Park Service, Pecos National Historical Park, Pecos, NM

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the U.S. Department of the Interior, National Park Service, Pecos National Historical Park, Pecos, NM. The human remains were removed from within the boundaries of Pecos National Historical Park, San Miguel County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Pecos National Historical Park.

A detailed assessment of the human remains was made by Pecos National Historical Park professional staff in consultation with representatives of the Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pawnee Nation of Oklahoma; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; and Zuni Tribe of the Zuni Reservation, New Mexico. The Apache Tribe of Oklahoma; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of Taos, New Mexico; and Ysleta Del Sur Pueblo of Texas were contacted for consultations but did not respond.

Between 1965 and 1980, human remains representing a minimum of 46 individuals were removed from Site LA 625 (Pecos Pueblo and the Pecos Mission Church and Convento Complex), in San Miguel County, NM, by park visitors. The human remains were picked up along the main trail through the site at various times and turned in to park staff at the Pecos National Historical Park Visitor Center. No known individuals were identified. No associated funerary objects are present.

Between 1966 and 1970, human remains representing a minimum of 78 individuals were removed from Site LA 625 in San Miguel County, NM, by National Park Service archeologists Jean Pinkly and Alden Hayes. No known individuals were identified. No associated funerary objects are present.

Between 1969 and 1970, human remains representing a minimum of one individual were removed from Site LA 625 in San Miguel County, NM, by University of Nebraska archeologist James Gunnerson. No known individual was identified. No associated funerary objects are present.

Between 1972 and 1976, human remains representing a minimum of eight individuals were removed from Site LA 625 in San Miguel County, NM, by National Park Service stabilization crews. No known individuals were identified. No associated funerary objects are present.

In 1977, human remains representing a minimum of 16 individuals were removed from Site LA 625 in San Miguel County, NM, by National Park Service archeologist Larry Nordby. The human remains were discovered in the back-dirt from the Pecos Mission 18th century church floor excavations. No known individuals were identified. No associated funerary objects are present.

In 1983, human remains representing a minimum of two individuals were removed from Site LA 625 in San Miguel County, NM, by National Park Service archeologist Larry Nordby during the visitor trail construction project. No known individuals were identified. No associated funerary objects are present.

In 1985, human remains representing a minimum of one individual were removed from Site LA 625 in San Miguel County, NM, by National Park Service archeologist Gary Matlock. The remains were discovered protruding from the wall in a passageway in the Pecos Mission Convento. No known individual was identified. No associated funerary objects are present.

The main occupation period of Pecos Pueblo is between A.D. 1325 and 1700. In 1838, the few remaining Pecos Pueblo residents emigrated from the pueblo to the Pueblo of Jemez, New Mexico. The Mission Church and Convento Complex was in use between A.D. 1625 and 1829. The last documented use of the church was in 1829.

In 1976, human remains representing a minimum of one individual were removed from Site LA 14154 (Hoagland's Haven) in San Miguel County, NM, by National Park Service archeologist Larry Nordby. Site LA 14154 was occupied A.D. 1475–1700, and is comprised of two one-room structures of which only the wide masonry foundations remain. No known individual was identified. No associated funerary objects are present.

Officials of Pecos National Historical Park have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of 153 individuals of Native American ancestry. Because the biological evidence is inconclusive for most of the individuals, the determination is based on multiple lines of evidence, including physical anthropology, provenience of the remains, history of the site, tribal consultation, and oral history. Lastly, officials of Pecos National Historical Park have determined that, pursuant to 25 U.S.C. 3001 (2), a relationship of shared group identity cannot reasonably

be traced between the Native American human remains and any present-day Indian tribe.

The Native American Graves Protection and Repatriation Review Committee (Review Committee) is responsible for recommending specific actions for disposition of culturally unidentifiable human remains. In January 2009, Pecos National Historical Park requested that the Review Committee recommend disposition of the 153 culturally unidentifiable human remains to the Pueblo of Jemez, New Mexico, because the human remains were found within the tribe's aboriginal and historical territory. The Review Committee considered the proposal at its May 23 – 24, 2009 meeting, and recommended disposition of the human remains to the Pueblo of Jemez, New Mexico.

A September 16, 2009, letter from the Designated Federal Officer, writing on behalf of the Secretary of the Interior, transmitted the authorization for the park to effect disposition of the physical remains of the culturally unidentifiable individuals to the Pueblo of Jemez, New Mexico, contingent on the publication of a Notice of Inventory Completion in the **Federal Register**. This notice fulfills that requirement.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Kathy Billings, superintendent, Pecos National Historical Park, PO Box 418, Pecos, NM 87552, telephone (505) 757–7201, before December 14, 2009. Disposition of the human remains to the Pueblo of Jemez, New Mexico may proceed after that date if no additional claimants come forward.

Pecos National Historical Park is responsible for notifying the Apache Tribe of Oklahoma; Comanche Nation, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan); Pawnee Nation of Oklahoma; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma; Ysleta del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: October 22, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–27238 Filed 11–12–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Geological Survey

Announcement of National Geospatial Advisory Committee Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The National Geospatial Advisory Committee (NGAC) will meet on December 1–2, 2009 at the Marriott Metro Center Hotel, 775 12th Street, NW., Washington, DC 20005. The meeting will be held in the London Room. The NGAC, which is composed of representatives from governmental, private sector, non-profit, and academic organizations, was established to advise the Chair of the Federal Geographic Data Committee on management of Federal geospatial programs, the development of the National Spatial Data Infrastructure, and the implementation of Office of Management and Budget (OMB) Circular A–16. Topics to be addressed at the meeting include:

—Current FGDC Activities.
—National Geospatial Forum.
—National Research Council—Mapping Science Committee.
—NGAC Subcommittee Activities, including Economic Recovery, Geospatial Policy, Emerging Technologies, Communications, The National Map, Partnerships, and Governance.
—Geospatial Revolution Project.
—National LIDAR Concept.

The meeting will include an opportunity for public comment on December 2. Comments may also be submitted to the NGAC in writing. Members of the public who wish to attend the meeting must register in advance. Please register by contacting Arista Maher at the U.S. Geological Survey (703–648–6283, *amaher@usgs.gov*). Registrations are due by November 24, 2009. While the meeting will be open to the public, seating may be limited due to room capacity.

DATES: The meeting will be held from 8:30 a.m. to 5 p.m. on December 1 and from 8 a.m. to 4:30 p.m. on December 2.

FOR FURTHER INFORMATION CONTACT: John Mahoney, U.S. Geological Survey (206–220–4621).

SUPPLEMENTARY INFORMATION: Meetings of the National Geospatial Advisory Committee are open to the public. Additional information about the NGAC and the meeting is available at *http://www.fgdc.gov/ngac.*

Dated: November 6, 2009.

Ivan DeLoatch,

Executive Director, Federal Geographic Data Committee.

[FR Doc. E9–27283 Filed 11–12–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R4-ES-2009-N219]
[41910-1112-0000-F2]

Permit(s); Commercial Park in Brevard County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for an extension of incidental take permit; availability of proposed low-effect habitat conservation plans; request for comment/information.

SUMMARY: We, the Fish and Wildlife Service (Service), have received an application from The Commons Group, LLC (Applicant) for an extension of incidental take permit (ITP) # TE126179-0 for 10 years under the Endangered Species Act of 1973, as amended (Act). We request public comment on the permit application and plan, as well as on our preliminary determination that the plan qualifies as low-effect under the National Environmental Policy Act (NEPA). To make this determination we used our environmental action statement and low-effect screening form, which are also available for review.

DATES: To ensure consideration, please send your written comments by December 14, 2009.

ADDRESSES: If you wish to review the application and HCP, you may request documents by U.S. mail, e-mail, or phone (see below). These documents are also available for public inspection by appointment during normal business

hours at the office below. Send your comments or requests by any one of the following methods.

E-mail: northflorida@fws.gov. Use ''Attn: Permit number TE126179-0'' as your message subject line.

Fax: Field Supervisor, (904) 731-3045, Attn.: Permit number TE126179-0.

U.S. mail: Field Supervisor, Jacksonville Ecological Services Field Office, Attn: Permit number TE126179-0, U.S. Fish and Wildlife Service, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

In-person drop-off: You may drop off information during regular business hours at the above office address.

FOR FURTHER INFORMATION CONTACT: Erin Gawera, telephone: (904) 731-3121, e-mail: *erin_gawera@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Section 9 of the Act (16 U.S.C. 1531 *et seq.*) and our implementing Federal regulations in the Code of Federal Regulations (CFR) at 50 CFR 17 prohibit the ''take'' of fish or wildlife species listed as endangered or threatened. Take of listed fish or wildlife is defined under the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct'' (16 U.S.C. 1532). However, under limited circumstances, we issue permits to authorize incidental take—i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Regulations governing incidental take permits for threatened and endangered species are in the Code of Federal Regulations (CFR) at 50 CFR 17.32 and 17.22, respectively. The Act's take prohibitions do not apply to federally listed plants on private lands unless such take would violate State law. In addition to meeting other criteria, an incidental take permit's proposed actions must not jeopardize the existence of federally listed fish, wildlife, or plants.

Applicant's Proposal

The applicant has been approved for take of approximately 7.5 ac of occupied Florida scrub-jay foraging and sheltering habitat incidental to construction of a commercial park, and seeks a 10–year extension on an existing permit. The 9-ac project is located on the southeast corner of Wickham Road and Summer Brook Drive within Section 31, Township 26 South, Range 37 East, Brevard County, Florida. The project includes development of a commercial park and the associated infrastructure, and landscaping. The applicant has been approved to mitigate for the take of the Florida scrub-jay through the deposit of $149,940 to the Nature Conservancy's Conservation Fund for the management and conservation of the Florida scrub-jay based on Service Mitigation Guidelines available on the Internet at *http://www.fws.gov/northflorida/Scrub-Jays/scrubjays.htm*.

Our Preliminary Determination

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, we determined that the ITP is a ''low-effect'' project and qualifies for categorical exclusion under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). The notice for this permit was published in the **Federal Register** on November 8, 2006 (71 FR 65540), and the ITP was issued on December 14, 2006. A low-effect HCP is one involving (1) Minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

Next Steps

We will evaluate the plan and comments we receive to determine whether the ITP extension application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets these requirements, we will issue the extension of ITP # TE126179-0. In December 2006 we determined issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the ITP extension. If the requirements are met, we will issue the permit extension to the applicant.

Public Comments

If you wish to comment on the permit application, plan, and associated documents, you may submit comments by any one of the methods in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: October 16, 2009.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E9–27333 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–55–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2009–N225; 40120–1112–0000–F2]

Receipt of 32 Applications for Incidental Take Permits for Single Family and Duplex Residential Developments on the Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: Receipt of applications for incidental take permits (ITPs) for Habitat Conservation Plans (HCPs); availability of proposed HCPs and environmental assessment (EA); request for comment.

SUMMARY: We, the Fish and Wildlife Service, announce the availability of proposed HCPs, 32 accompanying ITP applications, and an EA related to proposed developments that would take the Alabama beach mouse (*Peromyscus polionotus ammobates*) on Fort Morgan Peninsula, Baldwin County, Alabama. The HCPs analyze the take of the federally endangered Alabama beach mouse incidental to constructing 28 new single-family and replacing four existing single-family homes with four duplex residences (Projects). The 24 individual applicants request a total of 32 ITPs under the Endangered Species Act of 1973 (Act), as amended. The Applicants' HCPs describe the mitigation and minimization measures proposed to address the effects on the species.

DATES: We must receive any written comments on the ITP applications, EA, and HCPs at our Regional Office (see **ADDRESSES**) on or before December 14, 2009.

ADDRESSES: Documents will be available for public inspection by appointment during normal business hours at the

Fish and Wildlife Service's Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, GA 30345. Send your comments to the same address (*Attn:* David Dell); or to Field Supervisor, 1208–B Main Street, Daphne, Alabama 36526.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional HCP Coordinator, (See **ADDRESSES**), *telephone:* 404/679–7313; or Mr. Darren LeBlanc, Field Office Project Manager, at the Alabama Field Office (See **ADDRESSES**), telephone: 251/441–5859.

SUPPLEMENTARY INFORMATION: We announce the availability of the proposed HCPs, 32 accompanying ITP applications, and an EA, which analyzes the take of the Alabama beach mouse incidental to the Projects. This group of similar applications has been collected into what we refer to as ''ABM Batch V'' for efficiency in their review. The applicants request 50-year ITPs under section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act; 16 U.S.C. 1531 *et seq.*), as amended.

We specifically request information and opinions from the public via this notice on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the EA pursuant to NEPA regulations (40 CFR 1506.6). Further, we specifically solicit information regarding the adequacy of the HCPs per 50 CFR parts 13 and 17.

An assessment of the likely environmental impacts associated with the implementation of the proposed projects, the EA considers the environmental consequences of a no-action alternative, no-minimization, and the proposed action. The proposed action alternative is issuance of 32 ITPs and implementation of the HCPs as submitted by the Applicants. The HCP covers activities associated with the construction and maintenance of residences on 32 discrete lots totaling 16.9 acres on the Fort Morgan Peninsula. Under the preferred alternative, project development would result in the overall loss of 3.58 acres of ABM habitat. Avoidance, minimization and mitigation measures include a reduced design footprint, on-site land management to maintain use of the project sites by Alabama beach mice, and funding off-site habitat acquisition and management.

Public Comments

If you wish to comment, you may submit comments by any one of several methods. Please reference ''ABM Batch V'' in such comments. You may mail comments to the Fish and Wildlife Service's Regional Office (*see* **ADDRESSES**). You may also comment via the internet to *david_dell@fws.gov.* Please include your name and return address in your internet message. If you do not receive a confirmation from us that we have received your internet message, contact us directly at either telephone number listed under **FOR FURTHER INFORMATION CONTACT**.

Finally, you may hand-deliver comments to either of our offices listed under **ADDRESSES**. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Covered Area

The area encompassed under the HCP and ITP applications, the Fort Morgan Peninsula, extends over 30 miles from the Alabama-Florida border. Alabama beach mice historically ranged throughout the peninsula, but are now largely restricted to the western half. The following property owners have applied for ITPs in ABM Batch V:

Donald Dixon TE218224–0
Hogue Crossley TE218227–0
William Kenney TE218247–0
Harry Turpin TE218238–0
Aubrey Lucas TE218248–0, TE218249–0
Frances Bridges TE218251–0
Charles Minick TE218274–0
David Newton TE218275–0
Robert Fischer TE218276–0, TE218277–0
Boykin Properties TE218280–0
Becky Harris TE218281–0, TE218283–0
Spencer Harris TE218284–0, TE218285–0
Clinton Adams TE218288–0
Zachary Hutchens TE218291–0
Suzanne Wilcox TE218292–0
James Kastner TE218295–0
Timothy Kiely TE218326–0
Laureen Eick-Benson TE218329–0
Robert Prescott TE218330–0
Stuart Starrett TE218333–0
Christina Petrig TE218336–0, TE218354–0, TE218355–0, TE218356–0, TE218357–0
Andrew Marcotte TE218358–0
Mark Link TE218359–0
Tom Martin Homebuilders TE218362–0.

Next Steps

We will evaluate these ITP applications, including the HCPs and any comments we receive, to determine whether these applications meet the requirements of section 10(a)(1)(B) of the Act. We will also evaluate whether issuance of section 10(a)(1)(B) ITPs complies with section 7 of the Endangered Species Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue the 32 ITPs. If we determine that the requirements are met, we will issue the ITPs for the incidental take of the Alabama beach mouse.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: October 5, 2009.

Mark Musaus,

Acting Regional Director.

[FR Doc. E9–27275 Filed 11–12–09; 8:45 am]

BILLING CODE 4310–55–P

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee; Meeting

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Professional Responsibility on January 7 and January 8, 2010.

DATES: Thursday, January 7, 2010, from 9 a.m. to 5 p.m., and Friday, January 8, 2010, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held in Room 6505IR, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Executive Director of the Joint Board for the Enrollment of Actuaries, 202–622–8225.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Room 6505, 1111 Constitution Avenue, NW., Washington, DC on Thursday, January 7, 2010, from 9 a.m. to 5 p.m., and Friday, January 8, 2010, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions that may

be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the November 2009 Pension (EA–2A) Joint Board Examination in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the May 2010 Basic (EA–1) Examination and the May 2010 Pension (EA–2B) Examination will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions that may appear on the Joint Board's examinations and the review of the November 2009 Joint Board examination fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 p.m. on January 7 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and should submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All persons planning to attend the public session should notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than December 31, 2009, to 202–622–8300, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the; Internal Revenue Service, Joint Board for the Enrollment of Actuaries, Attn: Executive Director, SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Dated: November 2, 2009.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. E9–27218 Filed 11–12–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

Under 28 CFR 50.7, notice is hereby given that on November 6, 2009, two proposed and related Consent Decrees in *United States* v. *Carlyle Manufacturing Co., Inc., et al.,* No. 3:09–1784, and *United States* v. *Timothy Fidgeon as Trustee of the WALC Liquidating Trust,* No. 3:09–1780, were lodged with the United States District Court for the District of Connecticut.

The proposed Consent Decrees resolve claims of the United States, on behalf of the Environmental Protection Agency (''EPA''), under the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9601 *et seq.,* in connection with the Solvents Recovery Service of New England, Inc. Superfund Site in Southington, Connecticut (''Site''), against three defendants.

The proposed Consent Decree in *U.S.* v. *United States* v. *Carlyle Manufacturing Co., Inc., et al.,* requires Carlyle Manufacturing Co., Inc. to pay the proceeds of an insurance coverage claim which has a value estimated at $25,000, and for Lukon Inc. to pay $200,000. The proposed Consent Decree in *U.S.* v. *Timothy Fidgeon as Trustee of the WALC Liquidating Trust* requires the sole settlor to pay $907,000.

Both Consent Decrees provide that the settlors are entitled to contribution protection as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. 9613(f)(2), for matters addressed by the settlements.

The Department of Justice will receive for a period of 30 days from the date of this publication comments relating to the proposed Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and either e-mailed to *pubcommentees.enrd@usdoj.gov or* mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to: (1) *United States* v. *Carlyle Manufacturing Co., Inc., et al.,* No. 3:09–1784, D.J. No. 90–7–1–23/9; or (2) and *United States* v. *Timothy Fidgeon as Trustee of the WALC Liquidating Trust,* No. 3:09–1780, D.J. No. 90–7–1–23/12. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed Consent Decrees may be examined at the Office of the United States Attorney, District of Connecticut, Connecticut Financial Center, 157 Church Street, New Haven, CT 06510. During the public comment period, the proposed Consent Decrees may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* Copies of the proposed Consent Decrees may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy of either of the proposed Consent Decrees, please enclose a check in the amount of $10.25 for the *United States* v. *Carlyle Manufacturing Co., Inc., et al.,* settlement (25 cent per page reproduction cost), and/or $9.25 for the *United States* v. *Timothy Fidgeon as Trustee of the WALC Liquidating Trust* settlement, payable to the U.S. Treasury.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27232 Filed 11–12–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that on November 6, 2009, a proposed Consent Decree in *United States and State of Tennessee* v. *John Wieland Homes and Neighborhoods, Inc. et al.,* Civil Action No. 3:09–cv–01066, was lodged with the United States District Court for the Middle District of Tennessee, Nashville Division.

The Decree resolves the claims of the United States and the State of Tennessee against John Wieland Homes and Neighborhoods, Inc. and John Wieland Homes and Neighborhoods of the Carolinas, Inc. (collectively, ''Wieland'') for violations of the Federal Clean Water Act and State law at Wieland's residential housing developments in North Carolina, South Carolina, Georgia and Tennessee. Under the proposed Decree, Wieland will undertake a compliance program consisting of, among other things: Inspections, training, and enhanced recordkeeping to

reduce discharges of storm water from its developments. Wieland will also pay a civil penalty of $350,000.00, to be shared between the United States and the State of Tennessee.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to the Consent Decree between the United States, the State of Tennessee and Wieland, DOJ Ref. No. 90–5–1–1–08419.

The Decree may be examined at EPA's Region 4 office, 61 Forsyth Street, Atlanta, Georgia and at the office of the United States Attorney for the Middle District of Tennessee, 110 Ninth Avenue South, Suite A961, Nashville, Tennessee. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $ 75.25 (25 cents per page reproduction cost) (including Appendices) or $13.00 (excluding Appendices) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–27303 Filed 11–12–09; 8:45 am]

BILLING CODE 4410–15–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1374; NRC–2009–0486]

Notice of Acceptance of Renewal Application for Idaho State University and Opportunity To Request a Hearing, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation Special Nuclear Materials License SNM–1373 Pocatello, ID

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of acceptance of license renewal application and opportunity to request a hearing.

DATES: A request for a hearing must be filed by January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop EBB–2–C40M, Washington, DC 20555–0001. *Telephone:* (301) 492–3113; Fax: (301) 492–3363; *e-mail: Mary.Adams@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated February 27, 2009, a revised application from Idaho State University (ISU) requesting renewal of its Special Nuclear Materials (SNM) License No. SNM–1373 for a period of ten years. SNM–1373 authorizes ISU to possess and use SNM for education, research, and training programs at its campus in Pocatello, Idaho. ISU had previously submitted a renewal application for SNM–1373 on August 27, 2008. However, in a letter dated December 1, 2008, the NRC requested that ISU revise and resubmit the renewal application by January 30, 2009, which date was subsequently extended to February 27, 2009. In the December 1, 2008, communication, the NRC also indicated that, pursuant to 10 CFR 70.38(a), ISU is permitted to continue using special nuclear material in accordance with the existing license SNM–1373, pending a final Commission decision on the renewal request. This license renewal, if approved, would authorize ISU to continue to possess and use SNM under the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 70, Domestic Licensing of SNM.

Following an administrative review, documented in a letter to ISU dated June 3, 2009, the NRC staff has determined that the request for renewal contains all essential elements and has been accepted for technical review, and is acceptable for docketing. The application has been docketed in the Docket No. 70–1374, the existing docket for Special Nuclear Materials License SNM–1373. The acceptance letter estimated that the NRC staff would complete the technical review by May 2010. If the NRC approves the renewal application, the approval will be documented in renewal of NRC License No. SNM–1373. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's regulations. These findings will be documented in a Safety Evaluation Report. Because the licensed material will be used for research and development and for educational purposes, renewal of SNM–1373 is an action that is categorically excluded from a requirement to prepare an environmental assessment or environmental impact statement, pursuant to 10 CFR 51.22(c)(14)(v).

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for the renewal of Special Nuclear Material License No. SNM–1373 issued to Idaho State University (ISU) in Pocatello, Idaho. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). All documents filed in NRC adjudicatory proceedings, including documents filed by interested governmental entities participating under 10 CFR 2.315(c) and any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, must be filed in accordance with the E-Filing rule. The E-Filing rule requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the

petitioner/requestor must contact the Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV*, or by calling (301) 415–1677, to request: (1) A digital Identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor, or its counsel or representative, already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/sitehelp/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/applycertificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m., Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (800) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by January 12, 2010. As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner/requestor in the proceeding and how that interest may be affected by the results of the proceeding. The petition must provide the name, address, and telephone number of the petitioner and specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's/requestor's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's/requestor's interest.

A petition for leave to intervene must also include a specification of the contentions that the petitioner/requestor seeks to have litigated in the hearing. For each contention, the petitioner/requestor must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the petitioner/requestor must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings the NRC must make to support the granting of a license in response to the application. The petition must also include a concise statement of the alleged facts or expert opinions which support the position of the petitioner/requestor and on which the petitioner/requestor intends to rely at hearing, together with references to the specific sources and documents on which the petitioner/requestor intends to rely. Finally, the petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application that the petitioner disputes and the supporting reasons for each dispute, or, if the petitioner/requestor believes that the application fails to contain information on a relevant matter as required by law,

the identification of each failure and the supporting reasons for the petitioner's/requestor's belief. Each contention must be one that, if proven, would entitle the petitioner/requestor to relief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the request or petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by the applicant, or otherwise available to the petitioner/requestor. On issues arising under the National Environmental Policy Act, the petitioner/requestor shall file contentions based on the applicant's environmental report. The petitioner/requestor may amend those contentions or file new contentions if there are data or conclusions in the NRC draft or final environmental impact statement or if appropriate, the environmental assessment and associated draft or final finding of no significant impact, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed after the initial filing only with leave of the presiding officer.

Petitioners/requestors should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requestors or petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any petitioner/requestor that wishes to adopt a contention proposed by another petitioner/requestor must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the petitioner/requestor.

In accordance with 10 CFR 2.309(g), a request for hearing or a petition for leave to intervene may also address the selection of hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the application for license renewal and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1. ML092730441: February 27, 2009, letter from P. Crowell, Revised Request for License Renewal SNM–1373; and

2. ML091520550: June 3, 2009, letter from M. Adams to P. Crowell, Acceptance for Review of Application for Renewal of SNM–1373 (TAC No. L32827);

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.resource@nrc.gov*.

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov*, respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1);

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention;

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information. However, if more than 25 days remain

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff either after a determination on standing and need for access, or after a determination on trustworthiness and reliability, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 6th day of November 2009.

For the Nuclear Regulatory Commission.

Kenneth R. Hart,

Acting Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervener reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. E9–27319 Filed 11–12–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–259; NRC–2009–0490]

Tennessee Valley Authority; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Tennessee Valley Authority (the licensee) to withdraw its application dated July 18, 2008, as supplemented by letter dated December 5, 2008, for proposed amendment to Renewed Facility Operating License No. DPR–33 for the Browns Ferry Nuclear Plant, Unit 1, located in Limestone County, Alabama.

The proposed amendment would have revised the Technical Specifications (TS) to lower the numeric values of safety limit minimum critical power ratio (SLMCPR) in TS Section 2.1.1.2 for single and two reactor recirculation loop operation to incorporate the results of the Unit 1 Cycle 8 SLMCPR analysis.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 18, 2008 (73 FR 68456). However, by letter dated October 23, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated July 18, 2008, as supplemented by letter dated December 5, 2008, and the licensee's letter dated October 23, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at 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.resource@nrc.gov.*

Dated at Rockville, Maryland, this 3rd day of November 2009.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Senior Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27284 Filed 11–12–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 50–331; NRC–2009–0497]

FPL Energy Duane Arnold, LLC, Central Iowa Power Cooperative, Corn Belt Power Cooperative, Duane Arnold Energy Center; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Facility Operating License No. DPR–49, issued to FPL Energy Duane Arnold, LLC (the licensee), for operation of the Duane Arnold Energy Center, located in Linn County, Iowa. 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 change the legal name of the Licensee and Co-owner from ''FPL Energy Duane Arnold, LLC'' to ''NextEra Energy Duane Arnold, LLC.''

The proposed action is in accordance with the licensee's application dated April 17, 2009.

The Need for the Proposed Action

The proposed action is necessary to reflect the legal change of name of the Licensee and Co-Owner on April 16, 2009.

Environmental Impacts of the Proposed Action

The NRC has concluded in its safety evaluation of the proposed action that since this action is for a name change only that (1) there is a 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.

The details of the NRC staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

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 offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in individual or cumulative occupational 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 historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental 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 NRC 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

The action does not involve the use of any different resources than those previously considered in the Final Environmental Impact Statement for the Duane Arnold Energy Center, dated March 31, 2009.

Agencies and Persons Consulted

In accordance with its stated policy, on October 19, 2009, the NRC staff consulted with the Iowa State Liaison Officer regarding the environmental impact of the proposed action. The State official had no comments.

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 the proposed action, see the licensee's letter dated April 17, 2009. Documents may

be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at 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 send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 5th day of November 2009.

For the Nuclear Regulatory Commission.

Karl Feintuch,

Project Manager, Plant Licensing Branch III–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27276 Filed 11–12–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–334 and 50–41, Nos. DPR–66 and NPF–73, NRC–2009–0496]

Notice of Issuance of Renewed Facility Operating License for an Additional 20-Year Period FirstEnergy Nuclear Operating Company Beaver Valley Power Station, Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued Renewed Facility Operating License Nos. DPR–66 and NPF–73, to FirstEnergy Nuclear Operating Company (the licensee), the operator of the Beaver Valley Power Station (BVPS), Units 1 and 2. Renewed Facility Operating License Nos. DPR–66 and NPF–73 authorize operation of BVPS, Units 1 and 2, by the licensee at reactor core power levels not in excess of 2900 megawatts thermal (972 megawatts electric) for each unit, in accordance with the provisions of the BVPS, Units 1 and 2, renewed licenses and their Technical Specifications.

This notice also serves as the record of decision for the renewal of Facility Operating License Nos. DPR–66 and NPF–73 for BVPS, consistent with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 51.103. As discussed in the Final Supplemental Environmental Impact Statement (FSEIS) for BVPS, Units 1 and 2, dated May 2009, the Commission considered a range of reasonable alternatives that included generation from coal, natural gas, oil, wind, solar, hydropower, geothermal, wood waste, municipal solid waste, other biomass-derived fuels, delayed retirement, utility-sponsored conservation, a combination of alternatives, and a no-action alternative. The factors considered in the record of decision can be found in the supplemental environmental impact statement (SEIS) for license renewal, Supplement 36 regarding BVPS, Units 1 and 2.

BVPS, Units 1 and 2, are pressurized water reactors designed by Westinghouse Electric Corporation that are located along the Ohio River in Beaver County, PA. The site is located approximately 17 miles west of McCandless, PA. The application for the renewed licenses complied with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. As required by the Act and the Commission's regulations in 10 CFR Chapter I, the Commission has made appropriate findings, which are set forth in the licenses.

Prior public notice of the action involving the proposed issuance of the renewed licenses and of an opportunity for a hearing regarding the proposed issuance of the renewed licenses was published in the **Federal Register** on September 24, 2007 (72 FR 54301). For further details with respect to this action, see (1) the FirstEnergy Nuclear Operating Company, license renewal application for BVPS, Units 1 and 2, dated August 27, 2007; (2) the Commission's safety evaluation report (NUREG–1929), published in October 2009; (3) the Commission's safety evaluation report (NUREG–1929, Supplement 1), published in October 2009, (4) the licensee's updated safety analysis report; and (5) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 36), published in May 2009. These documents are available at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.*

Copies of Renewed Facility Operating License Nos. DPR–66 and NPF–73 may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Director, Division of License Renewal. Copies of the BVPS, Units 1 and 2, Safety Evaluation Report (NUREG–1929), Beaver Valley Power Station, Units 1 and 2, Safety Evaluation Report, Supplement 1 (NUREG–1929, Supplement 1), and the Final Environmental Impact Statement (NUREG–1437, Supplement 36) may be purchased from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161–0002 (*http://www.ntis.gov*), 703–605–6000, or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954, (*http://www.gpoaccess.gov*), 202–512–1800. All orders should clearly identify the NRC publication number and the requester's Government Printing Office deposit account number or a VISA or MasterCard number and expiration date.

Dated at Rockville, Maryland, this 5th day of November 2009.

For the Nuclear Regulatory Commission.

David J. Wrona,

Chief, Projects Branch 2, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–27277 Filed 11–12–09; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2010–8; Order No. 333]

Competitive Products Price and Classification Changes

AGENCY: Postal Regulatory Commission.

ACTION: Notice and order.

SUMMARY: The Commission is conducting a formal review of the Postal Service's planned rate adjustments for essentially all products in the competitive products category. A public comment period extends through November 23, 2009. This will be followed by a Commission determination on the consistency of the adjustments with certain considerations. The new rates and classification changes are expected to take effect January 4, 2010.

DATES: 1. Supplemental information from the Postal Service is due: November 13, 2009. 2. Comments are due: November 23, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*. Commenters who cannot submit their views electronically should contact the person identified in ''FOR FURTHER INFORMATION CONTACT'' by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 or *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION: On November 4, 2009, the Postal Service filed notice with the Commission concerning changes in rates of general applicability for competitive products.[1] The Filing also includes related mail classification changes. The Postal Service represents that, as required by the Commission's rules, 39 CFR 3015.2(b), the Filing includes an explanation and justification for the changes, the effective date, and a schedule of the changed rates. The price changes are scheduled to become effective January 4, 2010.

Attached to the Filing is the Governors' Decision evaluating the new prices and classification changes in accordance with 39 U.S.C. 3632–33 and 39 CFR 3015.2. The Governors' Decision provides an analysis of the competitive products' price and classification changes intended to demonstrate that the changes comply with section 3633(a) of title 39 and the Commission's rules. *See* 39 CFR 3015.7(c).

The Attachment to the Governors' Decision sets forth the price changes and related product description changes to be incorporated into the draft Mail Classification Schedule. Selected highlights of the price and classification changes follow.

Express Mail. Overall, Express Mail prices increase by 4.5 percent. Price increases for retail and Commercial Base pricing increase, on average, by 4.5 percent. The Commercial Plus prices increase by 4.4 percent. Separate rate tables are created for Commercial Base and Commercial Plus price categories.

Priority Mail. Priority Mail prices increase by 3.3 percent overall, with average retail prices increasing by about 3.9 percent. The average increase for Commercial Base prices is 2.9 percent. Commercial Plus prices increase by 0.9 percent.

Changes to the price structure include the following: (1) Renaming the regular-size flat rate box from ''Regular'' to ''Medium;'' (2) adding a new half-pound price starting at $4.22, and a flat rate padded envelope priced at $4.95 to the Commercial Plus category; (3) adding a new Commercial Plus Cubic category for shipments that weigh less than 20 pounds and are no larger than one-half cubic feet in volume for customers who ship more than 250,000 Priority Mail pieces annually.

Parcel Select. Parcel Select service increases, on average, by 4.7 percent. For destination entry parcels, the average price increases 3.9 percent for dropshipping at destination delivery units, 6.9 percent for parcels entered at a destination plant, and 6.9 percent for parcels entered at a destination Bulk Mail Center (BMC). There are no price changes to nondestination-entered parcels.

The Loyalty and Growth Incentive rebates are being eliminated as of the end of May 2010. Additionally, the 50–piece volume minimum for the Barcoded Nonpresort price category is being eliminated for parcels paid using PC postage. Other non-substantive conforming changes are being made to the draft Mail Classification Schedule.

Parcel Return. Parcel Return service increases, on average, by 3.0 percent. Return BMC prices will increase by 3.3 percent, and the price for parcels picked up at a delivery unit will increase by 2.1 percent.

Global Express Guaranteed. Global Express Guaranteed service increases, on average, by 4.1 percent. The existing structure remains the same.

Express Mail International. Express Mail International service increases, on average, by 2.9 percent. The existing structure remains the same.

Priority Mail International. Overall, Priority Mail International (PMI) prices increase on average by 3.0 percent. The existing structure of PMI remains the same; however, there will be a single maximum dimension for both rectangular and non-rectangular pieces and rate group 6 is being assigned to Cuba. The name of the regular-size flat rate box changes from ''Regular'' to ''Medium.''

Inbound Air Parcel Post. There will be a single maximum dimension for both rectangular and non-rectangular pieces.

Global Expedited Package Services (GEPS) contracts. There will be a single maximum dimension for both rectangular and non-rectangular pieces.

Global Plus contracts. There will be a single maximum dimension for both rectangular and non-rectangular pieces.

Country group assignments. The country rate group for Kosovo is established. Its country group assignment corresponds to that for Serbia.

Details of these changes may be found in the Attachment to Governors' Decision No. 09–13.

The Filing also includes two additional attachments: A redacted table that shows FY 2010 projected volumes, revenues, attributable costs, contribution, and cost coverage for each product, and an application for non-public treatment of the unredacted version of that table.

Notice. The establishment of rates of general applicability for competitive products and the associated mail classification changes effect a change in the draft Mail Classification Schedule. As such, pursuant to subpart E of part 3020 of its rules, 39 CFR 3020.90 *et seq.*, the Commission provides notice of the Postal Service's Filing. Interested persons may express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B. Comments are due no later than November 23, 2009.

Pursuant to 39 U.S.C. 505, Richard A. Oliver and John Klingenberg are appointed as Public Representatives to represent the interests of the general public in the above-captioned docket.

Supplemental information. Pursuant to 39 CFR 3015.6, the Postal Service is requested to provide a written response to the questions below. To assist in the completion of the record, answers should be provided as soon as possible, but by no later than November 13, 2009.

1. Please refer to the redacted, untitled and unnumbered table attached to the Filing which presents certain information for FY 2010 (Table 1).

a. The Commission is unable to verify the FY 2010 volume, revenue, attributable cost, contribution, or cost coverage data provided by the Postal Service in Table 1. Please provide data similar to that provided in Docket No. CP2009–8 to support all data in both the redacted and unredacted versions of Table 1;[2] and

b. Provide a narrative explaining the method used to forecast data in Table 1.

2. Please reference Governors' Decision No. 09–13. The Postal Service provides overall price increases for the following products: Express Mail 4.5 percent, Priority Mail 3.3 percent, Parcel Select 4.7 percent, Parcel Return Service 3.0 percent, Global Express Guaranteed 4.1 percent, Express Mail International 2.9 percent, and Priority Mail International 3.0 percent. Please describe the weights used to derive the Before Rates and After Rates indices relied upon to calculate the overall (average) percentage price increase for each product and service referenced

[1] *See* Notice of the United States Postal Service of Changes in Rates of General Applicability for Competitive Products Established in Governors' Decision No. 09-13, November 4, 2009 (Filing). The Filing is available on the Commission's Web site, *http://www.prc.gov*, under Daily Listings for November 4, 2009. Pursuant to 39 U.S.C. 3632(b)(2), the Postal Service is obligated to publish the Governors' Decision and record of proceedings in the Federal Register at least 30 days before the effective date of the new rates or classes.

[2] *See, e.g.*, Docket No. CP2009-8, Library Reference USPS-CP2009-8/NP1, November 18, 2008.

above. Please show all calculations in Excel.[3]

It is ordered:

1. The Commission establishes Docket No. CP2010–8 to provide interested persons an opportunity to express views and offer comments on whether the planned changes are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020, subpart B.

2. Comments on the Filing are due no later than November 23, 2009.

3. The Commission appoints Richard A. Oliver and John Klingenberg as Public Representatives to represent the interests of the general public in this proceeding.

4. The Postal Service shall provide a written response to the supplemental information requested in this Order no later than November 13, 2009.

5. The Secretary shall arrange for publication of this order in the *Federal Register*.

By the Commission.

Judith M. Grady,

Acting Secretary.

[FR Doc. E9–27268 Filed 11–12–E8; 8:45 am]

BILLING CODE 7710–FW–S

[3] *See e.g., id.*, Notice of the United States Postal Service of Filing of Responses to Chairman's Information Request No. 2, December 8, 2008.

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11926 and #11927]

Indiana Disaster #IN–00031

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Indiana Dated 11/06/2009.

Incident: Severe Storms and Flooding.

Incident Period: 08/04/2009 through 08/09/2009.

Effective Date: 11/06/2009.

Physical Loan Application Deadline Date: 01/05/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 08/06/2010.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Clark, Floyd, Jennings.

Contiguous Counties:

Indiana: Bartholomew, Decatur, Harrison, Jackson, Jefferson, Ripley, Scott, Washington.

Kentucky: Jefferson, Oldham, Trimble.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.500
Homeowners Without Credit Available Elsewhere	2.750
Businesses With Credit Available Elsewhere	6.000
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11926 6 and for economic injury is 11927 0.

The States which received an EIDL Declaration # are Indiana, Kentucky.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 6, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–27187 Filed 11–12–09; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11924 and # 11925]

Pennsylvania Disaster # PA–00027; Administrative Declaration of a Disaster for the Commonwealth of Pennsylvania

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Pennsylvania dated 11/05/2009.

Incident: Apartment Building Fire.

Incident Period: 10/25/2009.

Effective Date: 11/05/2009.

Physical Loan Application Deadline Date: 01/04/2010.

Economic Injury (EIDL) Loan Application Deadline Date: 08/05/2010.

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: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Columbia,

Contiguous Counties: Pennsylvania: Luzerne, Lycoming, Montour, Northumberland, Schuylkill, Sullivan.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.125
Homeowners Without Credit Available Elsewhere	2.562
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	3.625
Non-Profit Organizations Without Credit Available Elsewhere	3.000
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	3.000

The number assigned to this disaster for physical damage is 11924 5 and for economic injury is 11925 0.

The State which received an EIDL Declaration # is Pennsylvania.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: November 5, 2009.

Karen G. Mills,

Administrator.

[FR Doc. E9–27313 Filed 11–12–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60945; File No. SR–NYSEArca–2009–97]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Schedule of Fees and Charges for Exchange Services

November 5, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 26, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. 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 section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 2, 2009. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to reduce the volume levels and rates for Tier 1 and Tier 2 effective November 2, 2009. A more detailed description of the proposed changes follows.

Tier 1

Currently Tier 1 rates are applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an average daily volume (''ADV'') per month of 30 million shares and transact a total ADV per month of 90 million shares (includes both adding and removing). Under this proposal Tier 1 rates will be applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of 25 million shares and transact a total ADV per month of 80 million shares. The Exchange will also lower both the rebate for adding liquidity and the fee for removing liquidity. Currently, the rebate for adding liquidity is set at $0.0030 per share, and the fee for removing liquidity is set at $0.0030 per share. Under this proposal the rebate for adding liquidity will be $0.0027 and the fee for removing liquidity will be $0.0027.

Tier 2

Currently Tier 2 rates are applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV per month of 20 million shares and transact a total ADV per month of 60 million shares. Under this proposal Tier 2 rates will be applied to ETP Holders and Market Makers that provide liquidity on the Exchange with an ADV of 15 million shares and transact a total ADV per month of 50 million shares. The Exchange will also lower both the rebate for adding liquidity and the fee for removing liquidity. Currently, the rebate for adding liquidity is set at $0.0028 per share, and the fee for removing liquidity is set at $0.0030 per share. Under this proposal the rebate for adding liquidity will be $0.0026 and the fee for removing liquidity will be $0.0028.

The Exchange recognizes that volumes in November and December can be seasonally lighter during the holidays, and is therefore reducing the Tier 1 and Tier 2 volume requirements to qualify for the Exchange's best rates.

Provide Tier

The Exchange also plans to implement a new Provide Tier. The Provide Tier will be applied to ETP Holders and Market Makers that transact an average daily share volume per month greater than 35 million shares in transactions that provide displayed liquidity to the Exchange. For qualifying customers the Exchange will pay a rebate of $0.0027 per share for transactions that add liquidity in Tape A and Tape C securities. Basic Rate pricing will apply for removing liquidity unless tiered rate volume levels are obtained. For example, firms qualifying for both the Provide Tier and Tier 2 will receive a $0.0027 rebate for providing liquidity and the Tier 2 rate of $0.0028 for removing liquidity.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on November 2, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [sic] of the Securities Exchange Act of 1934 (the ''Act''),[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all Users.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19–b4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[8] of the Act and subparagraph (f)(2) of Rule 19b–4[9] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

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–NYSEArca–2009–97 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–97. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSEArca–2009–97 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27254 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60949; File No. SR–NYSE–2009–110]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending a Temporary Equity Transaction Fee for Shares Executed on the NYSE MatchPoint℠ System, Effective Upon Filing Through January 31, 2010

November 6, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on October 30, 2009, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. 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 extend a temporary equity transaction fee for shares executed on the NYSE MatchPoint℠ (''NYSE MatchPoint'' or ''MatchPoint'') system, effective upon filing through January 31, 2010. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 7, 2009, the Exchange filed with the Securities and Exchange Commission (the ''Commission'') a proposed rule change to adopt a temporary equity transaction fee for shares executed on the NYSE MatchPoint℠ system, effective until February 28, 2009 (the ''January filing'').[4] On February 26, 2009, the Exchange filed with the Commission a proposed rule change to extend this temporary equity transaction fee until April 30, 2009 (the ''March filing'').[5] On April 29, 2009, the Exchange filed with the Commission a proposed rule change to further extend this temporary equity transaction fee until June 30, 2009 (the ''April filing'').[6] On July 6, 2009, the Exchange filed with the Commission a proposed rule change to further extend this temporary equity transaction fee

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 59229 (January 12, 2009) 74 FR 3119 (January 16, 2009) (SR–NYSE–2009–01).

[5] *See* Securities Exchange Act Release No. 59491 (March 3, 2009) 74 FR 10107 (March 9, 2009) (SR–NYSE–2009–20).

[6] *See* Securities Exchange Act Release No. 59864 (May 5, 2009) 74 FR 22194 (May 12, 2009) (SR–NYSE–2009–44).

until July 31, 2009 (the ''July filing'').[7] On August [sic] 31, 2009, the Exchange filed with the Commission a proposed rule change to further extend this temporary equity transaction fee until October 31, 2009 (the ''October filing'').[8] Through this filing, the Exchange proposes to extend this equity transaction fee to be effective upon filing through January 31, 2010.

Prior to the January filing, the equity transaction fee was $.0015 per share executed on the MatchPoint system. In the January filing, the Exchange proposed to adopt a scaled fee for MatchPoint users based on the average daily volume of shares executed during a calendar month through the MatchPoint system as follows:

Average daily volume of shares executed	Rate
50,000 shares or less ...	$.0015 per share.
Over 50,000 to 499,999	$.0010 per share.
500,000 and greater	$.0005 per share.

The March, April, July and October filings proposed to continue this fee schedule.

The Exchange believes that the extension of the fee schedule through January 31, 2010 will continue to reward those who have been using the MatchPoint system for share execution, and will provide a continued incentive for new participants in MatchPoint.

2. Statutory Basis

The basis under the Securities Exchange Act of 1934 (the ''Act'')[9] for the proposed rule change is the requirement under Section 6(b)(4) that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Exchange believes the fees are reasonable in that they carry forward a reduction in fees that the January filing established and that the March, April, July and October filings extended, and are equitable in that they are available to all members who access the MatchPoint system.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[10] of the Act and subparagraph (f)(2) of Rule 19b–4[11] thereunder, because it establishes a due, fee, or other charge imposed by the NYSE.

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.

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–NYSE–2009–110 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2009–110. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSE–2009–110 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27255 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[7] *See* Securities Exchange Act Release No. 60278 (July 10, 2009) 74 FR 34615 (July 16, 2009) (SR–NYSE–2009–67).

[8] *See* Securities Exchange Act Release No. 60439 (July 31, 2009) [sic] 74 FR 40270 (August 11, 2009) (SR–NYSE–2009–78).

[9] 15 U.S.C. 78a.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60950; File No. SR–BX–2009–069]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Add 75 Classes to the Penny Pilot Program

November 6, 2009.

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 27, 2009, NASDAQ OMX BX, Inc. (the ''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 the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ OMX BX, Inc. (the ''Exchange'') proposes to designate 75 options classes to be added to the Penny Pilot Program, as referenced in Chapter V, Section 33 of the Rules of the Boston Options Exchange Group, LLC (''BOX''). The Exchange intends to notify Participants of the classes to be added to the Penny Pilot Program via Regulatory Circular. The text of the proposed Regulatory Circular is attached as Exhibit 2.[3]

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 self-regulatory organization 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 self-regulatory organization 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

On Monday, October 19, 2009 the Exchange submitted a proposed rule change with the Securities and Exchange Commission (''Commission'') to (i) extend the Penny Pilot Program in options classes (''Penny Pilot Program'') previously approved by the Commission through December 31, 2010; (ii) expand the number of classes included in the Penny Pilot Program; and (iii) replace on a semi-annual basis any Penny Pilot Program classes that have been delisted.[4]

The top 300 most actively traded multiply listed options classes in the prior six calendar months[5] preceding their addition to the Penny Pilot Program that are not yet included in the Penny Pilot Program will be phased-in to the Penny Pilot Program over four successive quarters with 75 classes added in each of November 2009, February 2010, May 2010, and August 2010.[6] Options classes with high premiums will be excluded for the quarterly additions.[7]

Based on trading activity for the six months ending September 30, 2009, the Exchange proposes to add the following 75 classes to the Penny Pilot Program on November 2, 2009:

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
118	ABX	Barrick Gold Corp	120	MRK	Merck & Co Inc/NJ.
134	AUY	Yamana Gold Inc	35	MS	Morgan Stanley.
48	AXP	American Express Co	73	NLY	Annaly Capital Management Inc.
93	BA	Boeing Co/The	99	NOK	Nokia OYJ.
115	BBT	BB&T Corp	121	NVDA	Nvidia Corp.
111	BBY	Best Buy Co Inc	80	ORCL	Oracle Corp.
94	BP	BP PLC	61	PALM	Palm Inc.
67	CHK	Chesapeake Energy Corp	37	PBR	Petroleo Brasileiro SA.
58	CIT	CIT Group Inc	85	PG	Procter & Gamble Co/The.
78	COF	Capital One Financial Corp	41	POT	Potash Corp of Saskatchewan Inc.
68	CVX	Chevron Corp	74	RF	Regions Financial Corp.
130	DE	Deere & Co	124	RIG	Transocean Ltd.
104	DOW	Dow Chemical Co/The	132	RMBS	Rambus Inc.
49	DRYS	DryShips Inc	103	S	Sprint Nextel Corp.
88	EFA	iShares MSCI EAFE Index Fund	83	SDS	ProShares UltraShort S&P500.
64	ETFC	E*Trade Financial Corp	122	SKF	ProShares UltraShort Financials.
32	EWZ	iShares MSCI Brazil Index Fund	107	SLB	Schlumberger Ltd.
25	FAS	Direxion Daily Financial Bull 3X Shares	91	SLV	iShares Silver Trust.
33	FAZ	Direxion Daily Financial Bear 3X Shares.	84	SRS	ProShares UltraShort Real Estate.
112	FITB	Fifth Third Bancorp	119	SSO	ProShares Ultra S&P500.
70	FSLR	First Solar Inc	101	STI	SunTrust Banks Inc.
26	FXI	iShares FTSE/Xinhua China 25 Index Fund.	125	SVNT	Savient Pharmaceuticals Inc.
82	GDX	Market Vectors—Gold Miners ETF	92	TBT	ProShares UltraShort 20+ Year Treasury.
127	GG	Goldcorp Inc	14	UNG	United States Natural Gas Fund LP.
18	GLD	SPDR Gold Trust	117	UNH	UnitedHealth Group Inc.
129	HGSI	Human Genome Sciences Inc	110	UPS	United Parcel Service Inc.
62	HIG	Hartford Financial Services Group Inc	81	USB	US Bancorp.
72	HPQ	Hewlett-Packard Co	44	USO	United States Oil Fund LP.
59	IBM	International Business Machines Corp	60	UYG	ProShares Ultra Financials.
45	IYR	iShares Dow Jones US Real Estate Index Fund.	96	V	Visa Inc.
105	JNJ	Johnson & Johnson	10	WFC	Wells Fargo & Co.
131	JNPR	Juniper Networks Inc	133	WYNN	Wynn Resorts Ltd.

[3] The Commission notes that the text of the proposed Regulatory Circular is attached at Exhibit 2 to the Form 19b–4, but is not attached to this Notice.

[4] *See* Securities and Exchange Act Release No. 60886 (October 27, 2009) (SR–BX–2009–067). This proposal was effective immediately upon filing.

[5] For purposes of assessing national average daily volume the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

[6] The quarterly additions will be effective on November 2, 2009, February 1, 2010, May 3, 2010 and August 2, 2010, respectively. For purposes of identifying the classes to be added per quarter, the Exchange shall use data from the prior six calendar months preceding the implementation month, except that the month immediately preceding their addition to the Pilot would not be utilized for purposes of the six month analysis. For example, the quarterly additions to be added on November 2, 2009 shall be determined using data from the six month period ending September 30, 2009.

[7] The threshold for designation as ''high priced'' at the time of selection of new classes to be included in the Penny Pilot Program is $200 per share or a calculated index value of 200. The determination of whether a security is trading above $200 or above a calculated index value of 200 shall be based on the price at the close of trading on the Expiration Friday prior to being added to the Penny Pilot Program.

Nat'l ranking	Symbol	Company name	Nat'l ranking	Symbol	Company name
98	KO	Coca-Cola Co/The	52	X	United States Steel Corp.
39	LVS	Las Vegas Sands Corp	114	XHB	SPDR S&P Homebuilders ETF.
87	MCD	McDonald's Corp	86	XLI	Industrial Select Sector SPDR Fund.
71	MGM	MGM Mirage	79	XLU	Utilities Select Sector SPDR Fund.
113	MON	Monsanto Co	54	XRT	SPDR S&P Retail ETF.
63	MOS	Mosaic Co/The			

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system and, in general, to protect investors and the public interest, by identifying the options classes added to the Pilot in a manner consistent with prior rule changes.

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 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

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Exchange Act [10] and Rule 19b–4(f)(1) thereunder,[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing BOX rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

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–BX–2009–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–069. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 No. SR–BX–2009–069 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27256 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60944; File No. SR–NYSEArca–2009–99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending Its Fee Schedule

November 5, 2009.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 29, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A) [4] of the Act and Rule 19b–4(f)(2) [5] thereunder. 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 section of its Schedule of Fees and

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on November 2, 2009. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

In an effort to enhance participation on the Exchange and to offer increased liquidity to its Users,[6] the Exchange proposes to add new transaction credits stemming from the use of Tracking Orders. The Exchange also proposes to cap monthly payments stemming from the use of Self Trade Prevention modifiers. These changes will be effective November 2, 2009. A more detailed description of the proposal follows.

Currently, there are no rates specifically related to the use of Tracking Orders.[7] In order to incentivize the use of this order type and attract liquidity to NYSE Arca, the Exchange proposes to introduce three volume-based tiers, offering credits to all ETP Holdings who use Tracking Orders that result in executions on the Exchange.

Tracking Order Tier 1 offers ETP Holders a credit of $0.12 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume (''ADV'') per month greater than or equal to 5 million shares. In addition, the Exchange will offer ETP Holders a credit of $0.15 per 100 shares for each Tracking Order that results in an execution in excess of 15 million shares.[8]

Tracking Order Tier 2 offers ETP Holders a credit of $0.10 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume per month between 2.5 million shares and 4,999,999 shares.

Tracking Order Tier 3 offers ETP Holders a credit of $0.05 per 100 shares where their Tracking Orders result in executions on the Exchange with an average daily share volume per month between 1 million shares and 2,499,999 shares.

In addition, the Exchange is proposing to cap the net payment of credits and fees stemming from an ETP Holder's use of Self Trade Prevention Modifiers[9] at a net total of $25,000 per month. This cap will apply uniformly to all ETP Holders.

The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. By introducing these tiered credits, the Exchange is enhancing the incentive to participate on the Exchange through the use of Tracking Orders, as well as provide additional liquidity to the marketplace. The Exchange believes the proposed fees are reasonable and equitable in that they apply uniformly to all ETP Holders. The proposed changes will become operative on November 2, 2009.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 [sic] of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and Section 6(b)(4) of the Act,[11] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The proposed changes to the Schedule are part of the Exchange's continued effort to attract and enhance participation on the Exchange, by offering attractive rates and rebates with volume-based incentives. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all Users.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members.

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.

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–NYSEArca–2009–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–99. 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

[6] *See* NYSE Arca Equities Rule 1.1(yy).

[7] *See* NYSE Arca Equities Rule 7.31(f). Tracking Orders are un-displayed limit orders eligible for execution at the NBBO in the Tracking Order Process.

[8] This incremental credit rebates ETP Holders $.0012 for each share up to and including 15 million ADV, and $0.0015 for each share in excess of 15 million ADV.

[9] *See* NYSE Arca Equities Rule 7.31(qq).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–NYSEArca–2009–99 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27253 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60953; File No. SR–NYSEAmex–2009–75]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by NYSE Amex LLC To Clarify Specialist Obligations

November 6, 2009.

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 22, 2009, NYSE Amex LLC (''NYSE Amex'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. 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 the Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 927NY–Specialists by making technical changes designed to offer clarity to the rule. The text of the proposed rule change is attached as Exhibit 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing by NYSE Amex is to revise the language in Rule 927NY–Specialists, in order to clarify certain provisions within the rule.

Specifically, the Exchange proposes to amend Rule 927NY(c)(3) by adding a reference Rule 925.1NY(b), in order to clarify Specialist obligations, as they pertain to continuous quoting. In its current form, Rule 927NY states that Specialists must provide continuous quotations in all appointed series. However, Rule 925.1NY(b) provides that Specialists must provide continuous quotations for 90% of the time the Exchange is open. To ensure that Specialist obligations contained in Rule 927NY are consistent with Rule 925.1NY, the Exchange proposes to add language to Rule 927NY(c)(3) in order to clarify that a Specialist needs to provide quotations in accordance with Rule 925.1NY(b).

The Exchange also proposes to delete Rule 927NY(c)(6). Under the structure of the Exchange's electronic trading systems, the automated execution system referenced in Rule 927NY(c)(6) is part of the overall NYSE Amex electronic trading system. Whenever a Specialist provides electronic quotations to NYSE Amex, the Specialist automatically participates in the automatic execution system. It is not possible for a Specialist to submit quotes to the Exchange without being subject to the automatic execution system, nor is it possible to participate in the automatic execution system without submitting electronic quotes. Because participation in the auto-execution system is not optional, it is not appropriate to designate participation in it as an obligation. The Exchange proposes to reserve Rule 927NY(c)(6) for future use.

By clarifying its rules and abolishing out-dated language, the Exchange is not changing or altering any obligation, rights, policies or practices enumerated within its rules.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[3] in general, and furthers the objectives of Section 6(b)(5) of the Act,[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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.

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 solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] Because the proposed rule change does not: (i)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(f)(6).

Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)(iii) thereunder.[8]

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.

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–NYSEAmex–2009–75 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2009–75. 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of NYSE 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–NYSEAmex–2009–75 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27257 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange satisfied the pre-filing requirement.

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60958; File No. SR–BX–2009–070]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Modify Fees for Members Using the NASDAQ OMX BX Equities System

November 6, 2009.

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 28, 2009, NASDAQ OMX BX, Inc. (''BX'') 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 the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing a proposed rule change to modify pricing for BX members using the NASDAQ OMX BX Equities System. BX will implement the proposed rule change on November 2, 2009. The text of the proposed rule change is attached as Exhibit 5 and is available at *http://nasdaqomxbx.cchwallstreet.com.*[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

BX is proposing to modify its fees to execute transactions on the NASDAQ OMX BX Equities System.[4] For securities listed on The NASDAQ Stock Market (''NASDAQ'') or the New York Stock Exchange (''NYSE''), BX currently provides a credit for accessing liquidity of $0.0001 per share executed and assesses a charge of $0.0003 per share executed to members providing liquidity. For securities other than those listed on NASDAQ and NYSE (''Tape B securities''), BX currently charges a fee of $0.0016 per share executed to access liquidity and provides a credit of $0.0014 per share executed for providing liquidity. Under the proposed rule change, BX will make the fees and credits for Tape B securities identical to those for securities listed on NASDAQ and NYSE, resulting in a uniform fee schedule for all types of securities. The change will result in a fee reduction for persons accessing liquidity in Tape B securities and a fee increase for liquidity providers in those securities. BX notes that many market participants have responded favorably to BX's pricing structure for NASDAQ and NYSE

[3] *See infra* note 9.

[4] The changes all relate to transactions that execute at prices of $1 or more. For transactions at prices below $1, there is a charge of 0.1% of total transaction cost to remove liquidity and no charge or rebate to provide liquidity.

stocks, and it has concluded that it should be applied uniformly to all securities.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and with Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. The impact of the changes upon the net fees paid by a particular market participant will depend upon the types of stocks that it trades, the order types that it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity). BX notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. BX believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to BX.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX 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, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder.[8] 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.

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–BX–2009–070 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–070. 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,[9] 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. 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 publicly available. All submissions should refer to File Number SR–BX–2009–070 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27259 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(a)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60959; File No. SR–NASDAQ–2009–096]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Fees for Members Using the NASDAQ Market Center

November 6, 2009.

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 29, 2009, The NASDAQ Stock Market LLC (''NASDAQ'') 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 NASDAQ. Pursuant to Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] NASDAQ has designated this proposal as establishing or changing a due, fee, or other charge, which renders the proposed rule change effective upon filing.

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 the Substance of the Proposed Rule Change

NASDAQ proposes to modify pricing for NASDAQ members using the NASDAQ Market Center. NASDAQ will implement this rule change on November 2, 2009. The text of the proposed rule change is available at *http://nasdaqomx.cchwallstreet.com/*, at NASDAQ's principal office, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDAQ 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. NASDAQ 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

NASDAQ is proposing several changes to the fees associated with the use of the NASDAQ Market Center. First, for securities listed on NASDAQ or the New York Stock Exchange (''NYSE''), NASDAQ is increasing its most favorable ''take rate'' from $0.0027 per share executed to $0.0028 per share. The rate is available if a member has an average daily volume in all securities during the month of (i) more than 145 million shares of liquidity routed, removed, and/or provided, and (ii) more than 35 million shares of liquidity provided.

Second, NASDAQ is increasing its basic routing rate from $0.0026 per share executed to $0.0029 per share executed. The basic rate applies to orders that check the NASDAQ book for the full size of the order prior to routing, and most orders that are executed at NASDAQ OMX BX without checking the NASDAQ book for the full size of the order prior to routing. Different routing rates apply to directed orders, orders that check other destinations before checking the NASDAQ Market Center, and orders that attempt to execute solely against displayed interest in the NASDAQ Market Center prior to routing.

Third, NASDAQ is reducing the fee for directed orders in Tape B securities routed to NASDAQ OMX BX, from $0.0022 to $0.0002. The change reflects a reduction in the fees that NASDAQ OMX BX will charge to execute orders in Tape B securities routed to it, effective November 2, 2009.[5]

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls. NASDAQ is instituting modest increases in certain fees associated with accessing liquidity and routing, in order to make the fees that NASDAQ members pay to execute on NASDAQ and to route more uniform and, in the case of routing fees, more reflective of costs charged to NASDAQ by the venues to which it routes. NASDAQ is also changing its fee for routing directed orders in Tape B securities to NASDAQ OMX BX, to reflect contemporaneous fee changes at that venue and to make the fee consistent with the comparable fee charged for Tape A and C securities.

The impact of the changes upon the net fees paid by a particular market participant will depend upon a number of variables, including its monthly volume, the order types it uses, and the prices of its quotes and orders (*i.e.,* its propensity to add or remove liquidity, to set the best bid and offer, and to enter orders that are routable). NASDAQ notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. NASDAQ believes that its fees remain competitive with other venues and are reasonable and equitably allocated to those members on the basis of whether they opt to direct orders to NASDAQ.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 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.

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–NASDAQ–2009–096 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–096. 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,[10] 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, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All

[5] SR–BX–2009–070 (October 29, 2009).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(a)(ii).

[9] 17 CFR 240.19b–4(f)(2).

[10] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/.*

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 publicly available. All submissions should refer to File Number SR–NASDAQ–2009–096 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27260 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60956; File No. SR–ISE–2009–93]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program for Directed Orders

November 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. 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 ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until November 30, 2010.

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 self-regulatory organization 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 self-regulatory organization 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

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under Section 19(b)(3)(A) of the Exchange Act of 1934 (the ''Exchange Act'') and Rule 19b–4(f)(5) thereunder[3] so that it would be effective while the Commission considered a separate proposed rule change filed under Section 19(b)(2) of the Exchange Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[4] The current pilot expires on November 30, 2009,[5] but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot for an additional one year, until November 30, 2010, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[6]

2. Statutory Basis

The basis under the Exchange Act for this proposed rule change is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to continue operating under the pilot while the Commission considers the Permanent Rule Change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[7] and Rule 19b–4(f)(5)[8] thereunder. At any time within 60 days of the filing of such 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 proposes of the Exchange Act.

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 Exchange 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–ISE–2009–93 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–93. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 53104 (Jan. 11, 2006), 71 FR 2142 (Jan. 19, 2006) (Notice of Filing and Immediate Effectiveness of SR–ISE–2006–02).

[4] Securities Exchange Act Release No. 53103 (Jan. 11, 2006), 71 FR 3144 (Jan. 19, 2006) (Notice of Filing of SR–ISE–2006–01).

[5] Securities Exchange Act Release No. 59943 (May 20, 2009), 74 FR 25296 (May 27, 2009) (Notice of Filing and Immediate Effectiveness of SR–ISE–2009–28).

[6] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 3, at footnote 5.

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(5).

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, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. 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–ISE–2009–93 and should be submitted on or before December 4, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–27264 Filed 11–12–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice: 6805]

30-Day Notice of Proposed Information Collection: DS–5103, INTERNational Connections, 1405–XXXX

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* INTERNational Connections.
- *OMB Control Number:* None.
- *Type of Request:* New Collection.
- *Originating Office:* Bureau of Human Resources, Office of Recruitment, Examination and Employment (HR/REE)
- *Form Number:* None.
- *Respondents:* Alumni of the U.S. Department of State's Student Programs, including internships, Pickerings, Rangels, Stay-in-Schools, Co-ops, *etc.*
- *Estimated Number of Respondents:* 1,000.
- *Estimated Number of Responses:* 1,000.
- *Average Hours per Response:* 30 minutes.
- *Total Estimated Burden:* 500.
- *Frequency:* On Occasion.
- *Obligation to Respond:* Voluntary.

DATES: Submit comments to the Office of Management and Budget (OMB) for up to 30 days from November 13, 2009.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *E-mail: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. *Attention:* Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: You may obtain copies of the proposed information collection and supporting documents from Rachel C. Friedland who may be reached on 202–261–8055 or at *Friedlandrc@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary to properly perform our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond.

Abstract of proposed collection: The Department's student internship programs provide a key source of potential candidates who have an interest in, and are qualified, to become future Department employees. Naturally, HR/REE wants to strengthen and maintain its connections to this group, fostering and mentoring a pool of candidates from which to obtain successful recruits.

In June 2008, HR/REE surveyed over 3,500 former interns who served from 2005 through spring 2008. The intern alumni were queried as to their motivation in seeking an internship, whether or not they had pursued a career with either the Foreign Service or Civil Service, and what their recommendations would be for the best ways for the Department to maintain contact after the conclusion of their internships. Intern alumni endorse continued contact with Department representatives mainly through electronic means and website reminders of career opportunities.

In an effort to address these findings and provide viable solutions to improving student engagement prior to, during and following an internship, the Department developed an intern engagement strategy that will ultimately result in a measurable conversion of interns into Department hires for the Foreign or Civil Service. The foundation of this strategy is INTERNational Connections, a web-based career networking site for current, former and future interns that collects pertinent information about them, their experiences and their career goals.

Methodology: Currently, the Department of State internship program employs over 1,000 participants in the summer, in addition to fall and spring internships. Unfortunately, a tracking system does not exist which would enable the Department to capture the intern-to-hire ratio or conversion rate, or track this statistic over a period of time. This project would provide that missing link.

Users will register online at *careers.state.gov/internconnect* and create a profile that includes the aforementioned information.

Dated: October 21, 2009.

Ruben Torres,

Executive Director, Bureau of Human Resources, Department of State.

[FR Doc. E9–27310 Filed 11–12–09; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 6806]

Defense Trade Advisory Group; Notice of Open Meeting

Summary: The Defense Trade Advisory Group (DTAG) will meet in open session from 1 p.m. until 5 p.m. on Friday, December 4, 2009, at 1777 F Street, NW., Washington, DC. The membership of this advisory committee consists of private sector defense trade representatives, appointed by the Assistant Secretary of State for Political-Military Affairs, who advise the Department on policies, regulations, and technical issues affecting defense trade. The purpose of the meeting will be to

discuss current defense trade issues and topics for further study.

Members of the public may attend this open session and will be permitted to participate in the discussion in accordance with the Chair's instructions. Members of the public may, if they wish, submit a brief statement to the committee in writing.

As seating is limited to 125 persons, those wishing to attend the meeting must notify the DTAG Executive Secretariat by COB Tuesday, December 1, 2009. Members of the public requesting reasonable accommodation must also notify the DTAG Executive Secretariat by that date. If notified after this date, the DTAG Secretariat will be unable to accommodate requests due to security requirements at the meeting location.

Each non-member observer or DTAG member needing building access that wishes to attend this plenary session should provide: His/her name; company or organizational affiliation; and phone number to the DTAG Secretariat contact person, Patricia Slygh, via e-mail at *SlyghPC@state.gov*. DTAG members planning to attend the plenary session should also notify the DTAG Secretariat contact person at the e-mail provided above.

For additional information, contact Patricia Slygh, PM/DDTC, SA–1, 12th Floor, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, Washington, DC 20522–0112; telephone (202) 663–2830; FAX (202) 261–8199; or e-mail *SlyghPC@state.gov*.

Dated: November 5, 2009.

Robert S. Kovac,

Designated Federal Officer, Defense Trade Advisory Group, Department of State.

[FR Doc. E9–27322 Filed 11–12–09; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Competition Plans, Passenger Facility Charges

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application.

DATES: Please submit comments by January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Competition Plans, Passenger Facility Charges.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0661.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 40 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 136 hours per response.

Estimated Annual Burden Hours: An estimated 680 hours annually.

Abstract: This information is needed to meet the requirements of Title 49, Section 40117(k), Competition Plans, and to carry out a passenger facility charge application. The affected public includes public agencies controlling medium or large hub airports.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 5, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–27273 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Experimental Permits for Reusable Suborbital Rockets

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. This rulemaking established requirements for the FAA's authority to issue Experimental Permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew training and showing compliance with the regulations.

DATES: Please submit comments by January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov*.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Experimental Permits for Reusable Suborbital Rockets.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0722.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 10 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 18.6 hours per response.

Estimated Annual Burden Hours: An estimated 2,567 hours annually.

Abstract: The FAA has imposed requirements for obtaining an Experimental Permit as required by the Commercial Space Launch Amendments Act of 2004. This rulemaking established requirements for the FAA's new authority to issue Experimental Permits for reusable suborbital rockets to authorize launches for the purpose of research and development, crew training and showing compliance with the regulations.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation

Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to he collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 5, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–27272 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Revision From the Office of Management and Budget of a Currently Approved Information Collection Activity, Request for Comments; Associate Administrator for Commercial Space Transportation (AST) Customer Service Survey

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget (OMB) to approve a current information collection. The FAA Office of the Associate Administrator for Commercial Space Transportation (AST) conducts this survey in order to obtain industry input on customer service standards which have been developed and distributed to industry customers.

DATES: Please submit comments by January 12, 2010.

FOR FURTHER INFORMATION CONTACT: Carla Mauney on (202) 267–9895, or by e-mail at: *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Associate Administrator for Commercial Space Transportation (AST) Customer Service Survey.

Type of Request: Extension without change of an approved collection.

OMB Control Number: 2120–0611.

Form(s): There are no FAA forms associated with this collection.

Affected Public: A total of 50 Respondents.

Frequency: The information is collected on occasion.

Estimated Average Burden per Response: Approximately 1 hour per response.

Estimated Annual Burden Hours: An estimated 50 hours annually.

Abstract: The FAA Office of the Associate Administrator for Commercial Space Transportation (AST) conducts this survey in order to obtain industry input on customer service standards which have been developed and distributed to industry customers. This is a requirement of the White House NPR Customer Service Initiative. AST collects and analyzes the data for results.

ADDRESSES: Send comments to the FAA at the following address: Ms. Carla Mauney, Room 712, Federal Aviation Administration, IT Enterprises Business Services Division, AES–200, 800 Independence Ave., SW., Washington, DC 20591.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 5, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–27271 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35313]

Charleston, Blue Creek and Sanderson Railway Company—Lease and Operation Exemption—Norfolk Southern Railway Company

Charleston, Blue Creek and Sanderson Railway Company (CB&SR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from Norfolk Southern Railway Company (NS) and to operate two lines of railroad, totaling approximately 30.6 miles in length, located in West Virginia between: (1) Milepost TP–1.00 at Charleston and milepost TP–26.91, at Morris Fork; and (2) former B&O milepost 97.2, near Falling Rock, and former B&O milepost 100.9, near Blue Creek.[1]

According to CB&SR, NS will retain certain operating rights on the lines to allow NS to access a potential future interchange with the Elk River Railroad, if such an interchange is developed, and an inactive line believed to be held by the trustee of the Pennsylvania Central Railroad, if that line is reactivated in the future.

CB&SR certifies that its projected revenues as a result of the transaction will not exceed those that would qualify it as a Class III carrier. The earliest this transaction may be consummated is November 27, 2009, the effective date of the exemption (30 days after the exemption was filed).

Pursuant to the Consolidated Appropriations Act, 2008, Public Law 110–161, § 193, 121 Stat. 1844 (2007), nothing in this decision authorizes the following activities at any solid waste rail transfer facility: Collecting, storing, or transferring solid waste outside of its original shipping container; or separating or processing solid waste (including baling, crushing, compacting, and shredding). The term ''solid waste'' is defined in section 1004 of the Solid Waste Disposal Act, 42 U.S.C. 6903.

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. Petitions for stay must be filed no later than November 20, 2009 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35313, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Kelvin J.

[1] CB&SR states that it has entered into lease agreements with NS covering CB&SR's acquisition and operation of the lines for a period of 20 years, unless the lease agreements are terminated earlier in accordance with their other terms. CB&SR also notes that the lease agreements do not include ''interchange commitments'' as described in 49 CFR 1121.3 and in Disclosure of Rail Interchange Commitments, STB Ex Parte No. 575 (Sub-No. 1) (STB served May 29, 2008).

Dowd, Slover & Loftus LLP, 1224 Seventeenth Street, NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 9, 2009.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–27376 Filed 11–12–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No. FTA–2009–0052]

Proposed Policy Statement on the Eligibility of Pedestrian and Bicycle Improvements Under Federal Transit Law

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of proposed policy statement and request for comment.

SUMMARY: This notice describes the eligibility of pedestrian and bicycle improvements for Federal Transit Administration (FTA) funding and proposes a formal policy on the catchment area for pedestrians and bicyclists in relationship to public transportation stops and stations. FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments and noting any changes made to the policy statement as a result of comments received.

DATES: Comments must be received by January 12, 2010. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments identified by the docket number (FTA–2009–0052) by any of the following methods:

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

U.S. Mail: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

Hand Delivery: U.S. Department of Transportation, Docket Operations, West Building, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Fax: (202) 493–2251.

Instructions: You must include the agency name (Federal Transit Administration), and Docket number (FTA–2009–0052) for this notice at the beginning of your comments. All comments received will be posted, without change and including any personal information provided, to *http://www.regulations.gov* where they will be available to internet users. Please see the Privacy Act for more information.

You should submit two copies of your comments if you submit them by mail. If you wish to receive confirmation that FTA received your comments, you must include a self-addressed, stamped postcard. Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the U.S. Postal Service may be subject to delays. Parties submitting comments should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

For access to the DOT docket to read materials relating to this notice, please go to *http://www.regulations.gov* at any time.

Contact Information: For questions, please contact Matthew Lesh at (202) 366–0953 or *matthew.lesh@dot.gov.* For legal questions, please contact Jayme L. Blakesley at (202) 366–0304 or *jayme.blakesley@dot.gov.* The principal office of FTA is located at 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. Introduction

The purpose of this notice is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

U.S. Secretary of Transportation Ray LaHood has challenged the U.S. Department of Transportation to improve the livability of our nation's communities: ''President [Obama] has made livable communities a key aspect of his agenda. * * * How a community is designed—including the layout of the roads, transit systems and walkways—has a huge impact on its residents.'' [1] Funding bicycle and pedestrian facilities that provide access to public transportation is an important way for FTA to foster livable communities.

A livable community is ''a community where if people don't want an automobile, they don't have to have one; a community where you can walk to work, your doctor's appointment, pharmacy or grocery store. Or you could take light rail, a bus, or ride a bike.'' [2] According to Secretary LaHood, ''[l]ivable communities are mixed-use neighborhoods with highly-connected streets promoting mobility for all users, whether they are children walking or biking to school or commuters riding transit or driving motor vehicles. Benefits include improved traffic flow, shorter trip lengths, safer streets for pedestrians and cyclists, lower greenhouse gas emissions, reduced dependence on fossil fuels, increased trip-chaining, and independence for those who prefer not to or are unable to drive. In addition, investing in a ''complete street'' concept stimulates private-sector economic activity by increasing the viability of street-level retail small businesses and professional services, creating housing opportunities and extending the usefulness of school and transit facilities.'' [3] To illustrate the Secretary's point, more than half of older adults who described an inhospitable environment outside their homes would walk, bicycle, or take public transportation more if their streets were improved.[4]

With respect to bicycle facilities in particular, Secretary LaHood has committed the Department to ''work toward an America where bikes are recognized to coexist with other modes and to safely share our roads and bridges.'' [5] If we are to create livable communities, ''the range of transportation choices available to all Americans—including transit, walking, bicycling, and improved connectivity for various modes—must be expanded.'' [6]

[1] Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

[2] Christie Findlay, *Living in a Post-Car World,* AARP Bulletin, October 1, 2009.

[3] Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

[4] National Highway Traffic Safety Administration, Traffic Safety Facts: Older Population. 2005.

[5] Statement of Ray LaHood, Secretary of Transportation, before the 2009 National Bike Summit in Washington, DC (March 11, 2009).

[6] Statement of Ray LaHood, Secretary of Transportation, before the Committee on Banking, Housing, and Urban Affairs, U.S. Senate Hearing on Greener Communities, Greater Opportunities: New Ideas for Sustainable Development and Economic Growth (June 16, 2009).

Walking, bicycling, and public transportation are complimentary. Nearly all public transportation riders are pedestrians: Some access public transportation by walking a short distance; others may arrive by bicycle or automobile and then walk to a rail platform or bus stop. Safe walking and bicycling conditions are important inducements to using public transportation.

The success of public transportation can be limited by the problem of the ''first and last mile.'' One of ''the best present options for solving the first and last mile dilemma are * * * bicycles. * * * Bicycles are the no-brainer of American mobility, one of our great underutilized resources. There are more bicycles in the United States than there are households but most of those bikes sit in garages except for an occasional recreational outing. And yet they are the perfect transportation choice for a short one- to three-mile trip to and from a transit station.'' [7]

Whether used for longer trips to access amenities outside the walkable radius of a public transportation station, or whether they enable direct access to a public transportation facility, bicycle amenities play an important role in encouraging public transportation use by providing riders with greater opportunities, choice, flexibility and safety for reaching their final destinations.

In order to protect and support current public transportation riders as well as encourage and grow public transportation use, the development of safe, secure and appropriate catchment areas is essential. The users of public transportation require safe, convenient, and practical access routes as well as appropriate amenities to enhance the utility of public transportation systems across the country. This is being demonstrated in public transportation systems across the nation. In Washington, DC, for example, the Washington Metropolitan Area Transit Authority (WMATA) has been conducting a planning study to identify strategies for encouraging more people to walk and ride their bicycle to and from Metrorail stations. WMATA believes this will result in recommendations for a range of physical infrastructure improvements such as more and better bicycle parking facilities, better wayfinding and signage to and from stations, and better connections to nearby trails and on-road bicycle lanes. A study commissioned by the Federal Highway Administration identified examples of increased ridership due to enhanced bicycle facilities near public transportation. One example of this was a bike-on-bus demonstration program in Phoenix, Arizona that led to over 1,400 new public transportation riders per month.[8]

Walking, bicycling, and public transportation provide low-cost mobility that places fewer demands on local roads and highways. Studies suggest that developments that incorporate bicycling and walking infrastructure in proximity with public transportation can reduce fiscal outlays of local municipalities towards roads and other infrastructure expansion by twenty-five percent.[9] In a recent report comparing public transportation use by U.S. and German citizens, researchers found that German household budgets for transportation were lower than their U.S. counterparts despite smaller government subsidies for public transportation. These differences are attributed, in part, to the successful integration of public transportation services with safe walking and bicycling facilities.[10] In fact, a recent survey commissioned by a major real estate franchise indicates that over half of the firm's clients want access to public transportation and seventy-five percent agreed that the ability to walk to more destinations made a location more appealing.[11]

Moreover, public transportation riders spend less on transportation than persons that rely primarily on automobiles. When residents can walk, bike, and take public transportation, they have more control over their expenses. For example, public transportation riders in Wisconsin save almost $7 per trip over driving. These savings result in spending that, collectively, is responsible for 11,671 new jobs, $163.3 million in tax revenue, and $1.1 billion in total output.[12] It is also documented that a continuous and integrated sidewalk network flanked by street trees and other amenities directly stimulates public transportation ridership by providing both a safe and visually attractive setting between residences and public transportation nodes.[13]

Adequate sidewalks, pathways, and roadway crossings in the area around public transportation access points and amenities such as benches, shelters, and lighting at stops and stations are important for pedestrian comfort and safety. The most successful and useful public transportation systems have safe and convenient pedestrian access and provide comfortable waiting areas, all of which encourage greater use.[14] Well-connected sidewalks should be installed in all areas with regular public transportation service so that public transportation patrons will not be forced to walk in the street while traveling to or from a stop or station. In addition, roadway crossings should be made safer with an appropriate combination of facilities, such as marked crosswalks, median crossing islands, warning signs, and pedestrian signals.[15]

Distances beyond the walkshed of public transportation stops and stations may in fact be within the range of a short bicycle trip. Providing secure parking and other amenities for bicycles and cyclists at public transportation stops or stations can be less expensive than providing parking for automobiles. Access to public transportation allows bicyclists the opportunity to make longer trips. Where physical conditions prevent a continuous bicycle trip, public transportation can provide a link to previously inaccessible destinations.

Examples of destinations that generate bicycle traffic include major employment centers, schools, parks, shopping centers, neighborhoods, recreational facilities, colleges and military bases. According to a guide published by the American Association of State Highway and Transportation Officials, convenient access and bicycle parking should be provided at public transportation stations, ferries and other intermodal transfer points; all highways as well as arterials, except those where cyclists are legally prohibited, should be designed and constructed under the assumption that they will be used by cyclists; and bicycles should be considered in all phases of

[7] Andrea White-Kjoss, *Building Multimodal Transit Facilities: The One Clear Step Toward the New Transportation Paradigm*, Mass Transit, July/August 2009, at 36–37.

[8] Federal Highway Administration. *Bicycle and Pedestrian Connections to Transit: Lesson 9*, retrieved from: *http://safety.fhwa.dot.gov/PED_BIKE/univcourse/pdf/swless09.pdf.*

[9] *TCRP Report 102: Transit-Oriented Development in the United States: Experiences, Challenges, and Prospects*, Transportation Research Board, 2004.

[10] R. Buehler and J. Pucher, *Sustainable Transport that Works: Lessons from Germany*, World Transport Policy & Practice, V.15, No.1, April 2009.

[11] *Interest in Urban Homeownership Survey*, Coldwell Banker, June 2008.

[12] Khalid Bekka, *Economic Benefits of Public Transportation*, Wisconsin Department of Transportation, November 2003.

[13] R. Untermann, *Accommodating the Pedestrian: Adapting Towns and Neighborhoods for Walking and Bicycling*, Van Nostrand Reinhold, New York, 1984.

[14] *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

[15] *Pedestrian Safety Guide for Transit Agencies*, Federal Highway Administration, United States Department of Transportation, February 2008.

transportation planning, new roadway design, roadway reconstruction, and capacity improvement and public transportation projects.[16]

II. Planning Requirements

The joint planning regulations of the Federal Transit Administration and Federal Highway Administration require States and metropolitan planning organizations to integrate bicycle and pedestrian facilities into all transportation plans and improvement programs. Pedestrians and bicyclists must be provided with a reasonable opportunity to comment on long-range statewide transportation plans and metropolitan transportation master plans.[17]

III. Pedestrian and Bicycle Improvements Under Federal Transit Law

Most grant programs administered by the Federal Transit Administration (FTA) may be used to fund the design, construction, and maintenance of bicycle and pedestrian projects that enhance or are related to public transportation facilities. Improvements made expressly eligible by statute include capital projects like pedestrian and bicycle access to a public transportation facility [18]; and transit enhancements like pedestrian access, walkways, and bicycle access, including bicycle storage facilities and equipment for transporting bicycles on public transportation vehicles.[19] In addition, certain funding programs administered by the Federal Highway Administration (FHWA), including the Surface Transportation Program and the Congestion Mitigation and Air Quality Program, may be used for public transportation purposes. Once transferred to FTA for a public transportation purpose, these ''flexible'' funds are administered as FTA funds and take on all the eligibility and requirements of the FTA program to which they are transferred, except for the Federal share, which remains that required under the FHWA program.[20] The following is a description of the eligibility requirements for pedestrian and bicycle improvements under Federal Transit Law.

a. Capital Projects

FTA grantees may use any of the following programs to fund capital projects for pedestrian and bicycle access to a public transportation facility:

Section 5307 Urbanized Area Formula Program
Section 5309 New Starts and Small Starts Major Capital Investment Programs
Section 5309 Fixed Guideway Modernization Program
Section 5309 Bus and Bus Facilities Discretionary Program
Section 5310 Elderly Individuals and Individuals with Disabilities Formula Program
Section 5311 Non-Urbanized Area Formula Program
Section 5311 Public Transportation on Indian Reservations
Section 5316 Job Access and Reverse Commute Formula Program
Section 5317 New Freedom Program
Section 5320 Paul S. Sarbanes Alternative Transportation in Parks and Public Lands

Federal Transit Law defines the term ''capital project'' to mean, among other things, ''a public transportation improvement that enhances economic development or incorporates private investment, including * * * pedestrian and bicycle access to a [public] transportation facility.'' [21]

This eligibility is not without restrictions, however.[22] Bicycle and pedestrian projects made eligible under the aforementioned definition of capital project must satisfy additional statutory criteria, including requirements to enhance economic development or incorporate private investment; to enhance the effectiveness of public transportation project and relate physically or functionally to that project, or to establish new or enhanced coordination between public transportation and other transportation; and to provide a fair share of revenue for public transportation.[23]

b. Transit Enhancement Activities

One percent of Urbanized Area Formula program funds apportioned to urbanized areas with populations of at least 200,000 are set aside for transit enhancements. Eligible transit enhancement projects include pedestrian access and walkways, bicycle access, including bicycle storage facilities and installing equipment for transporting bicycles on public transportation vehicles.[24] As an added incentive, the Federal share of transit enhancement grants covers 90 percent of the cost of the project.[25] If the project involves providing bicycle access to public transportation, the grant or portion of that grant may be at a Federal share of 95 percent.[26]

IV. Proposed Policy

a. Background

FTA encourages the use of its funds for the type of well-designed pedestrian and bicycle amenities that attract new public transportation riders by expanding the catchment area and utility of public transportation stations. Therefore, FTA has decided to issue this statement of proposed policy on the eligibility of pedestrian and bicycle improvements for FTA funding. In particular, this notice proposes and seeks comment on threshold catchment areas for pedestrian and bicycle improvements near public transportation stops and stations.

A key requirement for determining the eligibility of a pedestrian or bicycle improvement is whether it has a functional relationship to a public transportation facility. FTA grantees have been left without adequate guidance, however, because FTA has made no determination of the specific distances pedestrians or bicyclists can be expected to travel to access a public transportation stop or station. The

[16] American Association of State Highway and Transportation Officials, *Guide for the Development of Bicycle Facilities, 1999.*

[17] Federal Transit Law, Title 49, Chapter 53, United States Code, encourages States and metropolitan areas to develop innovative transportation plans and programs which better integrate public transportation, bicycle facilities, pedestrian walkways, and other modes of travel into the existing transportation system. To this end, the statewide transportation plan and the transportation improvement program developed for each state must ''provide for the development and integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities) that will function as an intermodal transportation system.'' 49 U.S.C. 5304(a)(2). Similarly, the plans and transportation improvement programs (TIP) of all metropolitan areas must ''provide for the integrated management and operation of transportation systems and facilities (including accessible pedestrian walkways and bicycle transportation facilities).'' 49 U.S.C. 5303(c)(2). Moreover, when preparing long-range statewide transportation plans and transportation master plan, each state and metropolitan planning organization (MPO) must provide a reasonable opportunity to comment to the ''representatives of users of public transportation, representatives of users of pedestrian walkways and bicycle transportation facilities,'' among others. 49 U.S.C. 5303(i)(5) and 5304 (f)(3).

[18] 49 U.S.C. 5302(a)(1)(G)

[19] 49 U.S.C. 5302(a)(15)(f).

[20] 49 U.S.C. 5334(i).

[21] 49 U.S.C. 5302(a)(1)(G).

[22] Note: The restrictions described in this paragraph do not apply to projects funded under 49 U.S.C. 5320, Paul S. Sarbanes Alternative Transportation in Parks and Public Lands. Alternative transportation expressly includes activities that provide ''a nonmotorized transportation system (including the provision of facilities for pedestrians, bicycles, and nonmotorized watercraft).''

[23] For more information, see FTA's February 7, 2007, guidance on the Eligibility of Joint Development Projects under Federal Transit Law at 72 FR 5788.

[24] 49 U.S.C. 5302(a)(15).

[25] 49 U.S.C. 5319.

[26] 49 U.S.C. 5319.

purpose of this notice is to propose a radius around a public transportation stop or station within which FTA will consider pedestrian and bicycle improvements to have a *de facto* functional relationship to public transportation.

FTA's existing guidance on the eligibility of joint development improvements serves as the foundation for this proposed policy. According to that guidance, ''the functional relationship test of activity and use permits the use of FTA funds for joint development improvements [including pedestrian and bicycle improvements] located outside the structural envelope of a public transportation project, and may extend across an intervening street, major thoroughfare or unrelated property, [but] should not extend beyond the distance most people can be expected to safely and conveniently walk to use the transit service.'' [27]

Relying on this guidance, in most circumstances FTA has considered pedestrian improvements within about 1,500 feet of a public transportation stop or station to be functionally related. Improvements beyond a 1,500 foot radius were considered functionally related to public transportation only if they satisfied a test of activity and use.

The distance stated in FTA's existing guidance is too short. ''While distance is very important for pedestrians, on average they will walk further than the anecdotal rule of thumb of 400 meters used in many planning applications.'' [28] Research indicates that pedestrians are willing to walk at least one-half mile to train stations or other forms of reliable public transportation when the environment surrounding the station is safe and well-designed.[29] That equals a fifteen minute walk at a pace of two miles per hour. A one-half mile catchment area is a conservative estimate of the distance a pedestrian is willing to travel to a public transportation stop or station. FTA has reason to believe that pedestrians are willing to spend more than fifteen minutes walking to public transportation stops and stations: A study published in the American Journal of Preventative Medicine concluded that Americans who use public transportation spend a median of nineteen minutes daily walking to and from public transportation; and people in high-density urban areas were more likely to spend approximately thirty minutes walking to and from public transportation daily.[30]

Applying the same timeframes to bicyclists yields at least a three mile catchment area. Bicycle paths would extend further than a pedestrian facility and still be functionally related because ''bicyclists are willing to travel much longer distances than pedestrians, largely due to higher average speeds attainable by bicycle.'' [31] Inasmuch as the average bicycle commuter travels at ten miles per hour,[32] FTA proposes a bicycle catchment area of three miles from public transportation stops and stations.

b. Proposed Policy

For purposes of determining whether a pedestrian or bicycle improvement has a physical or functional relationship to public transportation, regardless of whether it is funded as a capital project or public transportation enhancement, all pedestrian improvements located within one-half mile and all bicycle improvements located within three miles of a public transportation stop or station shall have a *de facto* physical and functional relationship to public transportation. According to a test of activity and use, pedestrian and bicycle improvements beyond these threshold distances may be eligible for FTA funding if the improvement is within the distance most people can be expected to safely and conveniently walk or bicycle to use that particular transit service.

FTA seeks comment from all interested parties. After consideration of the comments, FTA will issue a second **Federal Register** notice responding to comments received and noting any changes made to the policy statement as a result of comments received.

Issued this 6th day of November 2009.

Peter M. Rogoff,

Administrator, Federal Transit Administration.

[FR Doc. E9–27240 Filed 11–12–09; 8:45 am]

BILLING CODE 4910–57–P

[27] FTA guidance on the *Eligibility of Joint Development Improvements under Federal Transit Law*, 72 FR 5790 (Feb. 7, 2007).

[28] Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 29.

[29] Schlossberg, M. *et al.*, How Far, By Which Route, and Why? A Spatial Analysis of Pedestrian Reference, Mineta Transportation Institute, June 2007.

[30] L.M. Besser and A.L. Dannenberg, *Walking to Public Transit: Steps to Help Meet Physical Activity Recommendations*, Am. J. Prev. Med., November 2005, at 273.

[31] Kevin J. Krizek, Ann Forsyth and Laura Baum, *Walking and Cycling International Literature Review*, Victoria Department of Transport, 2009, at 18.

[32] League of American Bicyclists. Retrieved From: *http://www.bikeleague.org/resources/better/commuters.php.*

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 6, 2009.

The Department of the Treasury is planning to submit 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 11020, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before January 12, 2010 to be assured of consideration.

Terrorism Risk Insurance Program (TRIP)

OMB Number: 1505–0190.

Type of Review: Extension.

Title: Terrorism Risk Insurance Program Rebuttal of Controlling Influence Submission.

Description: 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by an insurer that seeks to rebut a regulatory presumption of ''controlling influence'' over another insurer under the Terrorism Risk Insurance Program to provide Treasury with necessary information to make a determination.

Respondents: Businesses or other for-profit institutions.

Estimated Total Reporting Burden: 400 hours.

Clearance Officer: Howard Leiken, 202–622–7139, 1425 New York Avenue, Room 2113, Washington, DC 20220.

Robert Dahl,

Treasury PRA Clearance Officer.

[FR Doc. E9–27203 Filed 11–12–09; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–OID

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–OID, Original Issue Discount.

DATES: Written comments should be received on or before January 12, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Original Issue Discount.

OMB Number: 1545–0117.

Form Number: 1099–OID.

Abstract: Form 1099–OID is used for reporting original issue discount as required by section 6049 of the Internal Revenue Code. It is used to verify that income earned on discount obligations is properly reported by the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 5,906,965.

Estimated Time per Response: 12 min.

Estimated Total Annual Burden Hours: 1,142,324.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 5, 2009

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27211 Filed 11–12–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 976

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 976, Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

DATES: Written comments should be received on or before January 12, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland Internal Revenue Service, room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Claim for Deficiency Dividends Deductions by a Personal Holding Company, Regulated Investment Company, or Real Estate Investment Trust.

OMB Number: 1545–0045.

Form Number: Form 976.

Abstract: Form 976 is filed by corporations that wish to claim a deficiency dividend deduction. The deduction allows the corporation to use the payment of dividends to reduce taxes imposed after the tax return is filed. The IRS uses Form 976 to determine if shareholders have included the dividend amounts in gross income.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 7 hours, 40 minutes.

Estimated Total Annual Burden Hours: 3,830.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 2009.

R. Joseph Durbala,

IRS.

[FR Doc. E9–27213 Filed 11–12–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form-T

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, 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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form-T, Forest Activities Schedule.

DATES: Written comments should be received on or before January 12, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, Room 6242, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to R. Joseph Durbala at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3634, or through the Internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Forest Activities Schedule.

OMB Number: 1545–0007.

Form Number: Form-T.

Abstract: Form-T is filed by individuals and corporations to report income and deductions from the operation of a timber business. The IRS uses Form-T to determine if the correct amounts of income and deductions are claimed.

Current Actions: There are no changes being made to the Form-T at this time.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 12,333.

Estimated Time per Respondent: 3 hours, 37 minutes.

Estimated Total Annual Burden Hours: 446,208.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 4, 2009.

R. Joseph Durbala,

IRS Supervisory Tax Analyst.

[FR Doc. E9–27214 Filed 11–12–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (HEC New Enrollee Survey)]

Proposed Information Collection (Health Eligibility Center (HEC) New Enrollee Survey) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to improve HEC enrollment processes.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS), *http://www.Regulations.gov;* or to Mary Stout, Veterans Health Administration (193E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: mary.stout@va.gov.* Please refer to ''OMB Control No. 2900–New (HEC New Enrollee Survey)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Mary Stout at (202) 461–5867 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Health Eligibility Center (HEC) New Enrollee Survey, VA Form 10–0479.

OMB Control Number: 2900–New (HEC New Enrollee Survey).

Type of Review: New collection.

Abstract: The data collected on VA Form 10–0479 will be used to improve

customer service processes for Veterans applying for health care benefits. VA will use this information to determine the quality of customer service given to the Veteran and to identify what areas within the process are in need for improvement.

Affected Public: Individuals or Households.

Estimated Annual Burden: 153 hours.

Estimated Average Burden per Respondent: 5.7 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 1,055.

Dated: November 9, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27279 Filed 11–12–09; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0567]

Proposed Information Collection (PMC) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request additional certificates, replacements or corrections to a PMC.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (41D1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: mechelle.powell@va.gov.* Please refer to ''OMB Control No. 2900–0567'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 461–4114 or FAX (202) 501–2240.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: President Memorial Certificate (PMC), VA Form 40–0247.

OMB Control Number: 2900–0567.

Type of Review: Extension of a currently approved collection.

Abstract: The President Memorial Certificate is automatically issue without a request from the next of kin as part of processing a death benefits claim. The PMC allows eligible recipients (next of kin, other relatives or friends) to request additional certificates and/or replacement or corrected certificates upon the receipt of the original PMC.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,004.

Estimated Average Burden per Respondent: 2 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240,132.

Dated: November 9, 2009.

By direction of the Acting Secretary:

Denise McLamb,

Enterprise Records Service.

[FR Doc. E9–27281 Filed 11–12–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0406]

Proposed Information Collection (Verification of VA Benefits) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed by lenders to determine whether any benefits-related debts exist in the veteran-borrower's name prior to the closing of any VA-guaranteed loans on an automatic basis.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 12, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0523'' in any correspondence. During the comment period, comments may be viewed online at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's

functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden 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 through the use of automated collection techniques or the use of other forms of information technology.

Title: Verification of VA Benefits, VA Form 26–8937.

OMB Control Number: 2900–0406.

Type of Review: Extension of a currently approved collection.

Abstract: Lenders authorized to make VA-guaranteed home or manufactured loans on an automatic basis are required to determine through VA whether any benefits-related debts exist in the veteran-borrower's name prior to the closing of any automatic loan. Lenders cannot close any proposed automatic loan until evidence is received from VA stating that there is no debt, or if a debt exists, or the veteran has agreed on an acceptable repayment plan, or payments under a plan already in effect are current. VA Form 26–8937 is used to assist lenders and VA in the completion of debt checks in a uniform manner. The form restricts information requested to only that needed for the debt check and to eliminate unlimited versions of lender-designed forms. The form also informs the lender whether or not the veteran is exempt from paying the funding fee, which must be collected on all VA home loans unless the veteran is receiving service-connected disability compensation.

Affected Public: Individuals of households.

Estimated Annual Burden: 12,500 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 150,000.

Dated: November 9, 2009.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–27280 Filed 11–12–09; 8:45 am]

BILLING CODE P

Federal Register

Friday,
November 13, 2009

Part II

Environmental Protection Agency

40 CFR Part 81

Air Quality Designations for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–HQ–OAR–2007–0562; FRL–8969–2]

RIN–2060–AP27

Air Quality Designations for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes the initial air quality designations for most areas in the United States (U.S.), including Indian Country, for the 2006 24-hour fine particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS). Through these designations, EPA is identifying areas that meet or violate these NAAQS. In particular, EPA is identifying the geographic boundaries of areas that violate, or contribute to violations of, the 2006 24-hour $PM_{2.5}$ NAAQS. This is an important step toward providing the public health and welfare protections of the 2006 24-hour $PM_{2.5}$ NAAQS. The Clean Air Act (CAA) requires states with areas designated nonattainment to undertake certain planning and pollution control activities within these areas in order to attain the standards as quickly as reasonably possible. Designating areas also helps citizens know whether the air quality where they live and work is healthful or unhealthful. Health studies have shown significant associations between exposure to $PM_{2.5}$ and premature death from heart and lung disease. $PM_{2.5}$ can also aggravate heart and lung diseases and has been linked to effects such as cardiovascular symptoms, cardiac arrhythmias, heart attacks, respiratory symptoms, asthma attacks, and bronchitis. These effects can result in increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days. Individuals that may be particularly sensitive to $PM_{2.5}$ exposure include people with heart or lung disease, older adults, and children.

DATES: *Effective Date:* The effective date of this rule is December 14, 2009.

ADDRESSES: The EPA has established a docket for this action under Docket ID NO. EPA–HQ–OAR–2007–0562. All documents in the docket are listed in the index at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (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 the docket or in hard copy at the Docket, EPA/DC, EPA West, Room 3334, 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 Office of Air and Radiation Docket and Information Center is (202) 566–1742.

In addition, EPA has established a Web Site for this rulemaking at: *http://www.epa.gov/pmdesignations/2006standards/index.htm*. The Web site includes EPA's final state and tribal designations, as well as state initial recommendation letters, EPA modification letters, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Amy Vasu, Office of Air Quality Planning and Standards, U. S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, NC, 27711, phone number (919) 541–0107 or by e-mail at: *vasu.amy@epa.gov* or Rich Damberg, Office of Air Quality Planning and Standards, U. S. Environmental Protection Agency, Mail Code C539–01, Research Triangle Park, NC, 27711, phone number (919) 541–5592 or by e-mail at: *damberg.rich@epa.gov*.

Regional Office Contacts:

Region I—Alison Simcox (617) 918–1684,

Region II—Kenneth Fradkin (212) 637–3702,

Region III—Maria Pino (215) 814–2181,

Region IV—Steve Scofield (404) 562–9034,

Region V—John Summerhays (312) 886–6067,

Region VI—Joe Kordzi (214) 665–7186,

Region VII—Tracey Casburn (913) 551–7016,

Region VIII—Catherine Roberts (303) 312–6025,

Region IX—Eleanor Kaplan (415) 744–1286,

Region X—Krishna Viswanathan (206) 553–2684.

SUPPLEMENTARY INFORMATION: The public may inspect the rule and the technical support information at the following locations:

Regional offices	States
Dave Conroy, Chief, Air Programs Branch, EPA New England, 1 Congress Street, Suite 1100, Boston, MA 02114–2023, (617) 918–1661.	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Raymond Werner, Chief, Air Programs Branch, EPA Region II, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3706.	New Jersey, New York, Puerto Rico, and Virgin Islands.
Cristina Fernandez, Branch Chief, Air Quality Planning Branch, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2187, (215) 814–2178.	Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
Richard A. Schutt, Chief, Air Planning Branch, EPA Region IV, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, 12th Floor, Atlanta, GA 30303, (404) 562–9033.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.
Jay Bortzer, Chief, Air Programs Branch, EPA Region V, 77 West Jackson Street, Chicago, IL 60604, (312) 886–1430.	Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.
Guy Donaldson, Chief, Air Planning Section, EPA Region VI, 1445 Ross Avenue, Dallas, TX 75202, (214) 665–7242.	Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.
Joshua A. Tapp, Chief, Air Programs Branch, EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101–2907, (913) 551–7606.	Iowa, Kansas, Missouri, and Nebraska.
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Lisa Hanf, Air Planning Office, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3854.	American Samoa, Arizona, California, Guam, Hawaii, Nevada, and Northern Mariana Islands.

Regional offices	States
Mahbubul Islam, Manager, State and Tribal Air Programs, EPA Region X, Office of Air, Waste, and Toxics, Mail Code OAQ–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6985.	Alaska, Idaho, Oregon, and Washington.

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I. Preamble Glossary of Terms and Acronyms

The following are abbreviations of terms used in the preamble.

APA Administrative Procedure Act
CAA Clean Air Act
CBSA Core Based Statistical Area
CES Contributing Emissions Score
CFR Code of Federal Regulations
CSA Combined Statistical Area
DC District of Columbia
EO Executive Order
EPA Environmental Protection Agency
FR Federal Register
FRM Federal Reference Method
MPO Metropolitan Planning Organizations
NAAQS National Ambient Air Quality Standards
NO_3 Nitrate
NO_X Nitrogen Oxides
NTTAA National Technology Transfer Advancement Act
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SIP State Implementation Plan
SO_2 Sulfur Dioxide
SO_4 Sulfate
$\mu g/m^3$ micrograms per cubic meter
UMRA Unfunded Mandate Reform Act of 1995
TAR Tribal Authority Rule
TSD Technical Support Document
U.S. United States
VCS Voluntary Consensus Standards
VOC Volatile Organic Compounds

II. What Is the Purpose of This Document?

The purpose of this document is to announce and promulgate initial designations and boundaries for areas across the country with respect to the 2006 24-hour $PM_{2.5}$ NAAQS, in accordance with the requirements of CAA section 107(d). The list of areas in each state and in Indian Country, and the designation for each area, appear in the table at the end of this final rule (amendments to 40 CFR 81.300–356). For those areas designated nonattainment, states must develop a State Implementation Plan (SIP) and tribes may develop a Tribal Implementation Plan that provides for attainment of the NAAQS as expeditiously as practicable, in accordance with the requirements of the CAA and applicable EPA regulations. Pursuant to section 172(b), EPA is announcing that states and tribes must submit these plans no later than three years from the effective date of these designations. Such plans must meet the requirements of section 172(c). EPA's current implementation regulations for $PM_{2.5}$ at 40 CFR section 51.1000–1012 apply expressly only to the 1997 $PM_{2.5}$ NAAQS. EPA is considering amending those regulations explicitly to encompass the 2006 $PM_{2.5}$ NAAQS, and whether any other revisions to the regulations are necessary for these new standards. The Agency anticipates that the SIP requirements for the 2006 $PM_{2.5}$ NAAQS should be comparable to those for the 1997 $PM_{2.5}$ NAAQS, so that the regulations at sections 51.1000–1012 can be used as a guide to SIP planning for the 2006 NAAQS pending any revisions to the regulations. For those areas designated unclassifiable or attainment, states must meet other statutory and regulatory requirements to prevent significant deterioration of air quality in those areas.

This notice identifies the 31 areas, listed in *Table 1* below, comprised of one or more whole or partial counties, as nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS. The basis for establishing these areas as ''nonattainment'' is monitored air quality data for 2006–2008 indicating a violation of the NAAQS. EPA has also identified three additional areas with monitoring data now indicating potential violations of the 2006 24-hour $PM_{2.5}$ NAAQS, and we are in the process of working with affected states and tribes in accordance with CAA section 107(d) to establish nonattainment boundaries for these areas. Accordingly, EPA is deferring the designations for these areas until EPA and the states and tribes can develop sufficient information to determine the appropriate boundaries for these nonattainment areas. *Table 3* below identifies these areas.

EPA completed initial designations for the annual $PM_{2.5}$ NAAQS in 2005 (70 FR 944). EPA's review of 2006–2008 monitoring data indicates that two areas initially designated as ''unclassifiable/attainment'' for the annual $PM_{2.5}$ NAAQS are now violating that NAAQS. For these two areas, EPA intends to initiate the process to redesignate these currently violating areas to nonattainment in accordance with the procedures of CAA section 107(d)(3). The outcome of the redesignation process will be announced in a separate future notice.

This rule also lists the current designations for the 1997 24-hour $PM_{2.5}$ NAAQS designations, which remain in place. EPA has not previously, and is not by this action, revoking the 1997 annual or 24-hour $PM_{2.5}$ NAAQS. Areas currently designated nonattainment for the 1997 annual or 24-hour NAAQS remain so after this action, and remain obligated to comply with the statutory and regulatory requirements applicable to such areas. EPA is not by this action

promulgating any designations for the 1997 $PM_{2.5}$ NAAQS, but is announcing its intention to initiate the redesignation process under CAA section 107(d)(3) by a later action.

III. What Are Fine Particles and the Health Concerns Associated With Fine Particles?

Fine particles are extremely small airborne particles. Airborne particles with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter; 2.5 micrometers is less than about one-thirtieth the thickness of a human hair) are considered to be ''fine particles'' and are also known as $PM_{2.5}$. Due to their small size, they can penetrate deeply into the lungs of people who inhale them, where they can accumulate, react, or be absorbed into the body. Epidemiological studies have shown a significant association between elevated $PM_{2.5}$ levels and a number of serious health effects, including premature mortality, aggravation of respiratory and cardiovascular disease (as indicated by increased hospital admissions, emergency room visits, absences from school or work, and restricted activity days), lung disease, decreased lung function, asthma attacks, and certain cardiovascular problems such as heart attacks and cardiac arrhythmia. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.

Fine particles in the atmosphere are made up of a complex mixture of components, both liquid and solid. Common constituents of ambient $PM_{2.5}$ include: Sulfate (SO_4); nitrate (NO_3); ammonium (NH_4); elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements), which often is referred to as ''crustal'' material. Ambient $PM_{2.5}$ is typically comprised of a mixture of primary and secondary particles. ''Primary'' particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon and organic particles from diesel engines or burning activities). ''Secondary'' particles (e.g., SO_4 and NO_3) form in the atmosphere as a result of various chemical transformations of gaseous precursors such as sulfur dioxide (SO_2) and oxides of nitrogen (NO_X). These primary and secondary particles result from a broad variety of sources and emissions activities. Chemical precursors to secondary particles include SO_2, NO_X, volatile organic compounds (VOCs), and ammonia.

Fine particles are emitted by, and formed from emissions of, a wide range of sources. For example, SO_4 particles usually result from reactions of SO_2 emissions (from sources like power plants and industrial boilers) with ammonia emissions (from sources like animal feeding operations and fertilizer production, and to a lesser extent from mobile sources and power plants). Nitrate particles usually result from reactions of NO_X emissions (from such as mobile sources, power plants, or other industrial sources) with ammonia emissions. Crustal particles typically result from sources or activities that cause suspension of soils or metals in the air, such as re-entrained road dust, agriculture, or mining. Carbonaceous particles result from emissions from a wide range of sources or activities that cause the suspension of soil or metals in the air, such as re-entrained road dust, agriculture, or mining. Carbonaceous particles emanate directly from diesel and gasoline powered engines in mobile sources and heavy equipment, wildfires, waste burning, power generation, and other industrial sources. They also result from secondary reactions of VOCs in the atmosphere. Speciated data for $PM_{2.5}$ can provide information useful in identifying contributing emission sources and areas.

The relative proportion of primary and secondary particles, and the relative proportions of different species of particles found in a given geographic area, can vary widely, depending upon factors such as the mix of sources in the area, the mix of $PM_{2.5}$ precursors, and meteorology. The sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in any area also vary by type, amount, and number. Thus, the ambient $PM_{2.5}$ in areas results from complex interaction of emissions that, in the aggregate, comprise the total ambient $PM_{2.5}$ level.

Additionally, $PM_{2.5}$ and its precursors can transport hundreds or thousands of miles suspended in the atmosphere. The extent and direction of transport are affected by meteorological conditions and winds. Wind direction, speed, and strength all vary over the course of a single day, as well as by season, and, thus, over the entire year. Consequently, ambient $PM_{2.5}$ in an area may be the combination of primary and secondary $PM_{2.5}$ particles that result from the emissions of sources in that area, nearby areas, and areas much farther away.

Given the complex nature of $PM_{2.5}$, including its serious adverse health impacts, multiple precursors, numerous sources, meteorological considerations, and the need to distinguish between impacts of local and non-local sources at any violating monitor, EPA has developed a case-by-case approach to determining designations for $PM_{2.5}$. In particular, to determine which areas are violating, and which nearby areas are contributing to those violations, EPA considers the specific facts and circumstances of each area.

IV. What Air Quality Standards Has EPA Established To Address Fine Particles?

On July 18, 1997, EPA revised the NAAQS for particulate matter to add new standards for fine particle pollution, using $PM_{2.5}$ as the indicator. EPA established annual and 24-hour standards for $PM_{2.5}$ (62 FR 38652). The primary and secondary annual $PM_{2.5}$ standards were set at a level of 15 micrograms per cubic meter ($\mu g/m^3$), based on a 3-year average of annual mean $PM_{2.5}$ concentrations. The primary and secondary 24-hour $PM_{2.5}$ standards were set at a level of 65 $\mu g/m^3$, based on a 3-year average of the 98th percentile of 24-hour $PM_{2.5}$ concentrations. The 1997 annual and 24-hour $PM_{2.5}$ NAAQS are codified at 40 CFR section 50.7. EPA promulgated the designations for the 1997 $PM_{2.5}$ NAAQS on January 5, 2005, and these designations became effective on April 5, 2005 (70 FR 944). The U.S. Court of Appeals for the District of Columbia has recently upheld EPA's designations for the 1997 $PM_{2.5}$ NAAQS for all but one area.[1]

In 2006, EPA strengthened the primary and secondary 24-hour $PM_{2.5}$ NAAQS from 65 $\mu g/m^3$ to 35 $\mu g/m^3$, and retained the current primary and secondary annual $PM_{2.5}$ NAAQS at 15 $\mu g/m^3$. The revised 24-hour $PM_{2.5}$ standards were published on October 17, 2006 (71 FR 61144) and became effective on December 18, 2006. The 2006 annual and 24-hour $PM_{2.5}$ NAAQS are codified at 40 CFR 50.13. The more stringent 2006 24-hour $PM_{2.5}$ standards are based on significant evidence and numerous health studies demonstrating that serious health effects are associated with short-term exposures to $PM_{2.5}$ at this level.

Many petitioners challenged EPA's 2006 annual $PM_{2.5}$ standards but not the 2006 24-hour $PM_{2.5}$ standards. As a result of that challenge, the U.S. Court of Appeals for the District of Columbia has remanded the 2006 annual $PM_{2.5}$ standards to EPA for further proceedings.[2] Though remanded, the standards remain in effect while EPA determines how to respond to the concerns raised in the court's opinion.

[1] *See, Catawba et al.* v. *EPA,* No. 05–1064 and consolidated cases, decided July 7, 2009.

[2] *See, American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009).

EPA is currently evaluating a petition concerning the designations for the 2006 annual $PM_{2.5}$ standards and is not promulgating them at this time. Because the 2006 24-hour $PM_{2.5}$ NAAQS are in effect and the court did not remand them, EPA is proceeding to promulgate the designations for these standards in this rulemaking action.

V. What Are the Clean Air Act (CAA) Requirements for Air Quality Designations?

This section summarizes the provisions of section 107(d) of the CAA, which governs the process that the states and EPA must follow in order to promulgate designations. Section 107(d)(1) provides that, after EPA promulgates any new or revised NAAQS, EPA must promulgate designations for all areas nationwide through a specific administrative process governed by the terms of section 107(d). The designations process is explicitly exempt from the usual notice and comment procedures required by the Administrative Procedures Act (APA) pursuant to section 107(d)(2)(B). The process is likewise exempt from the procedural requirements of section 307(d), unless EPA invokes it, by virtue of the fact that designations are not included in the statutory list of actions in section 307(d)(1).[3]

The designation process begins with initial recommendations for designations from the states and tribes for areas within their jurisdictions. Section 107(d)(1)(A) provides that, by not later than one year after promulgation of a new or revised standard, each state is required to submit its recommendations for air quality designations for all areas under its jurisdiction to EPA, including the appropriate boundaries for nonattainment areas. Within section 107(d)(1)(A), the CAA establishes three types of designations: (i) Attainment areas that meet the NAAQS; (ii) unclassifiable areas, for which there is insufficient information to determine whether or not the area meets the NAAQS; and (iii) nonattainment areas that either do not meet the NAAQS, or that contribute to violations in a nearby area that does not meet the NAAQS. With respect to nonattainment areas, it should be noted that the statute does not define what constitutes a violation of the NAAQS. Nor does the statute define the terms ''area,'' ''contributes,'' or ''nearby'' for purposes of designations for any NAAQS.

EPA reviews state recommendations and, under section 107(d)(1)(B), is authorized to make any modifications to those recommendations that the Administrator deems necessary. The statute does not define the term ''necessary,'' but EPA interprets this to authorize the Administrator to modify designations that did not meet the statutory requirements or were otherwise inconsistent with the facts or analysis deemed appropriate by EPA. If EPA is considering modifications to a state's initial recommendation, EPA is required to notify the state of any such intended modifications to its recommendation not less than 120 days prior to EPA's promulgation of the final designation. If the state does not agree with EPA's modification, it then has an opportunity to respond to EPA and to demonstrate why it believes the modification proposed by EPA is inappropriate, as contemplated by section 107(d)(1)(B)(ii). Even if a state fails to provide any recommendation for an area, in whole or in part, EPA still must promulgate a designation that the Administrator deems appropriate, pursuant to section 107(d)(1)(B)(ii).

Section 107(d)(1)(B)(i) directs EPA to promulgate the designations as expeditiously as practicable, but not later than two years from the date of promulgation of new or revised air quality standards. However, in the event that EPA has insufficient information to promulgate the designation for an area, EPA may extend the period for up to one additional year.

EPA believes that section 107(d) provides the Agency with discretion to determine how best to interpret the terms in the definition of a nonattainment area (e.g., ''contributes to'' and ''nearby'') for a new or revised NAAQS, given considerations such as the nature of a specific pollutant, the types of sources that may contribute to violations, the form of the standards for the pollutant, and other relevant information. In particular, EPA believes that the statute does not require the Agency to establish bright line tests or thresholds for what constitutes contribution or nearby for purposes of designations.[4]

Similarly, EPA believes that the statute permits EPA to evaluate the appropriate application of the term ''area'' to include geographic areas based upon full or partial county boundaries, and contiguous or non-contiguous areas, as may be appropriate for a particular NAAQS. For example, section 107(d)(1)(B)(ii) explicitly provides that EPA can make modifications to designation recommendations for an area ''or portions thereof,'' and under section 107(d)(1)(B)(iv), a designation remains in effect for an area ''or portion thereof'' until EPA redesignates it. *See* footnote 4.

Section 107(d) contains additional specific provisions applicable to other NAAQS, such as ozone or lead in section 107(d)(4) and (5). The designations for the 2006 24-hour $PM_{2.5}$ NAAQS are governed by the general provisions of section 107(d)(1) and (2). However, EPA has concluded that it has discretion to look to other provisions of section 107(d) by analogy, as appropriate, to inform the process for designations for the 2006 24-hour $PM_{2.5}$ NAAQS. *See* footnote 4. For example, EPA recommended that states assess boundaries for nonattainment areas using information related to various factors similar to those that EPA had previously recommended for the 1997 annual $PM_{2.5}$ NAAQS designations, and which, in turn, relate to similar types of information that Congress provided for consideration in designations for ozone in section 107(d)(4)(A)(v). *See* footnote 4.

Another key distinction of section 107(d) is that it directs EPA to identify areas that violate the NAAQS, and nearby areas that ''contribute'' to those violations. Some have asserted that this term should be controlled by EPA's interpretation of comparable terms in section 110(a)(2)(D) and section 126. In other actions, such as the Clean Air Interstate Rule, EPA has relied on the term ''contribute significantly to nonattainment'' to support regulatory efforts to address regional interstate transport of pollutants, such as SO_2 and NO_X, that exacerbate nonattainment of the $PM_{2.5}$ NAAQS in downwind areas. In these actions, EPA has, through regulation, evaluated amounts of emissions that occur on a statewide basis, and EPA has used this information to develop a threshold to determine which states should be considered to contribute significantly to nonattainment in another state, at a level sufficient to require inclusion within a regional control strategy.

EPA believes that the explicit wording of section 107(d) and section 110(a)(2)(D) differs markedly, and that the purposes of the two provisions are likewise distinct. For example, EPA believes that section 110(a)(2)(D) requires some quantification of the amount of transport from a state, because the provision directs EPA to insure that there are provisions to

[3] This view has been confirmed in *Catawba et al.* v. *EPA,* No. 05–1064 and consolidated cases, decided July 7, 2009.

[4] This view has been confirmed in *Catawba et al.* v. *EPA,* No. 05–1064 and consolidated cases, decided July 7, 2009.

prevent emissions ''in amounts'' that would ''significantly'' contribute to violations of a NAAQS in another state. By comparison, section 107(d) includes no such explicit requirement for any quantification of emissions or contribution and does not use the term ''significant'' to modify the word ''contributes.'' Moreover, section 107(d) is intended to accomplish a distinctly different purpose from section 110(a)(2)(D). Section 107(d) directs EPA to identify those areas that are violating, and those nearby areas that are contributing to the violations, as the geographic areas within which states must address local emission sources for purposes of local attainment needs, in accordance with the requirements of section 172 and applicable regulations. By contrast, section 110(a)(2)(D) authorizes EPA to take action to address interstate transport of pollutants from one or more states that affect other states. To be sure, these provisions can work in concert to address the local and regional components of nonattainment for a given NAAQS. They are not, however, identical in wording or purpose.

Designation activities for federally-recognized tribes are covered under the authority of section 301(d) of the CAA. This provision of the CAA authorizes EPA to treat eligible tribes in a similar manner as states. Pursuant to section 301(d)(2), EPA promulgated regulations, known as the Tribal Authority Rule (TAR) (63 FR 7254). The TAR is codified at 40 CFR part 49. That rule specifies those provisions of the CAA for which it is appropriate to treat tribes in a similar manner as states. Under the TAR, tribes may choose to develop and implement their own CAA programs, but are not required to do so. The TAR also establishes procedures and criteria by which tribes may request from EPA a determination of eligibility for such treatment.

The designations process contained in section 107(d) of the CAA is included among those provisions determined to be appropriate by EPA for treatment of tribes in the same manner as states. Under the TAR, tribes generally are not subject to the same submission schedules imposed by the CAA on states. However, EPA itself is required to meet statutory deadlines for promulgation of designations and must observe those deadlines, notwithstanding the discretion EPA has to adjust schedules for tribes. As authorized by the TAR, tribes may seek eligibility to submit designation recommendations to EPA. In addition, CAA section 301(d)(4) gives EPA discretionary authority, in cases where it determines that treatment of tribes as identical to states is ''inappropriate or administratively infeasible,'' to provide for direct administration by regulation to achieve the appropriate purpose.

To date, one tribe has applied for eligibility under the TAR to submit its own initial designation recommendations under section 107(d)(1). Nonetheless, EPA invites all tribes to submit designation recommendations for new NAAQS. EPA works closely with tribes that request an opportunity to submit designation recommendations and supporting documentation. EPA reviews and acts on recommended designations in consultation with the tribes, and as with states, makes modifications to tribal recommendations as EPA deems necessary.

VI. How Did EPA Comply With the Clean Air Act (CAA) Requirements for Air Quality Designations?

Following the December 18, 2006 effective date of the 2006 $PM_{2.5}$ NAAQS, EPA invited all states and tribes to submit area and boundary recommendations within one year. On June 8, 2007, EPA provided guidance making recommendations concerning various aspects of the designations, including timing, process, and factors reflecting the types of information that could be relevant to the evaluation of a specific area.[5]

Most states, and those tribes who elected to do so, submitted initial designation recommendations and supporting documentation to EPA by December 18, 2007.[6] In general, state and tribal area recommendations were based on Federal Reference Method pair quality monitoring data from the 2004–2006 time period.[7] After reviewing and evaluating each of these recommendations, EPA provided responses to the states and tribes on August 19–20, 2008. In these letters, EPA indicated whether or not EPA intended to make modifications to the initial state or tribal recommendations and explained EPA's reasons for suggesting any such modifications. As part of this process, EPA incorporated consideration of the most recent air quality data then available, for the 2005–2007 time period. EPA requested that states and tribes respond to any proposed EPA modifications to their initial recommendations by October 20, 2008.

Although not required by section 107(d) of the CAA, EPA also provided an opportunity for comment by members of the public in order to gather additional information for EPA to consider before making final designations.[8] EPA published a notice on September 2, 2008 (73 FR 51259) which invited the public to comment on EPA's intended designations. In this notice, EPA offered a 30-day comment period to all interested parties, other than states and tribes, as they already have statutorily provided opportunities to participate in the designations process. EPA posted the state and tribal initial recommendations and EPA's responses, including suggested modifications, on a Web site which was accessible to the public to provide information to inform their comments: (*http://www.epa.gov/pmdesignations/2006standards/index.htm*). Timely comments from the public, and EPA's responses to significant public comments, are in the docket for this action.

The Agency received letters from many states and tribes suggesting changes to EPA's proposed modifications and providing additional information. EPA evaluated each letter and all of the timely technical support information that was provided before arriving at the final designation decisions. Some of the final designations reflect EPA's modifications to the initial state and tribal recommendations. Some reflect changes to EPA's suggested modifications, based upon information that states and tribes subsequently provided in response. Through this iterative process, EPA

[5] *See,* Memorandum from Robert J. Meyers, Acting Assistant Administrator, to EPA Regional Administrators—Regions I–X, ''Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standard,'' June 8, 2007.

[6] At this time, one tribe has applied for eligibility under the TAR to submit recommendations formally under section 107(d)(1). Nonetheless, EPA solicited and received submittals from tribes containing recommendations regarding EPA's designations for Indian country. For convenience, EPA will refer to these submittals as ''recommendations'' in this notice.

[7] At each of these stages of the process, states, tribes and EPA have used the three most recent full calendar years of air quality monitoring data then available. By regulation, states and tribes must submit fully quality assured air quality monitoring data for a calendar year to EPA by July of the following year. Hence, at the time of the initial recommendations, 2004–2006 was the most recent set of data; at the time of EPA's consideration of those recommendations, 2005–2007 was the most recent set of data; at the time of these designations, 2006–2008 is the most recent set of data.

[8] EPA did not elect to invoke section 307(d) for these designations. Pursuant to section 107(d)(2)(B), EPA may elect to use a notice and comment process as part of the designations process for a given NAAQS at the Agency's discretion. In this instance, EPA concluded that this extra process could provide additional helpful information. Normally, members of the public could of course express their views through the states and tribes who have a formal role in the designations process provided in section 107(d).

developed the information necessary to inform the final designations decisions.

On December 22, 2008, then EPA Administrator Johnson signed a notice concerning the designations for the 2006 24-hour $PM_{2.5}$ NAAQS, and the notice was made available to the public on the EPA Web site at that time. However, that signed notice was never published in the **Federal Register** and, therefore, designations were not officially promulgated. Section 107(d)(2)(A) requires EPA to publish the notice in the **Federal Register** in order to promulgate designations. The December 2008 notice was awaiting publication in January 2009 when the newly-elected Administration identified the notice as one that should receive additional review before publication.[9]

Since January 2009, EPA has thus been reviewing the designation decisions for the 2006 24-hour $PM_{2.5}$ NAAQS. Three significant events have occurred in the interim that relate to the designations. First, the U.S. Court of Appeals for the District of Columbia issued its opinion in the litigation challenging EPA's 2006 annual $PM_{2.5}$ NAAQS.[10] This decision resulted in, among other things, a remand of the annual standards to EPA for further consideration, but did not affect the 2006 24-hour $PM_{2.5}$ NAAQS. Second, monitoring data for 2008 has now become available for areas across the U.S. Accordingly, EPA has had the opportunity to evaluate whether data from 2006–2008 would result in previously violating areas now attaining the NAAQS, or previously attaining areas now violating the NAAQS. Third, the U.S. Court of Appeals for the District of Columbia issued its opinion in the litigation challenging EPA's 2005 designations for the 1997 annual $PM_{2.5}$ NAAQS.[11] In that decision, the court has affirmed EPA's interpretation of section 107(d) and general approach to promulgating designations for that NAAQS. The final designations that EPA will promulgate through publication of this rule have been informed by these more recent events.

EPA has already received a number of petitions concerning the designations for the 2006 24-hour $PM_{2.5}$ NAAQS. Of these, two in particular require specific discussion because of the significant issues they raise. The first petition, from the American Lung Association and other groups, requests that EPA take action to promulgate designations for the 2006 annual $PM_{2.5}$ NAAQS.[12] EPA is currently evaluating that petition and will determine later whether to grant or deny it. In the meantime, however, EPA's review of the 2006–2008 monitoring data indicates that two areas currently designated as ''unclassifiable/attainment'' for the 1997 annual $PM_{2.5}$ NAAQS are now violating that NAAQS. For these two areas, EPA intends to initiate the process to redesignate these areas, including both violating and contributing areas, to nonattainment in accordance with the procedures of CAA section 107(d)(3), as appropriate.

The second petition, from the Environmental Defense Fund and other groups, requests that EPA delay or reconsider designations for attainment areas that contain heavily travelled roadways because the monitoring network in such areas may not adequately reflect near-roadway exposure to $PM_{2.5}$.[13] EPA will respond to this petition separately in more detail, but believes that it is not appropriate to delay designations for the 2006 24-hour $PM_{2.5}$ NAAQS further, based on the concerns raised by these petitioners. EPA intends to evaluate the issues raised by these petitioners in the context of the ongoing review of the $PM_{2.5}$ NAAQS and the associated monitoring regulations.

VII. How Did EPA Apply the Statutory Requirements and Applicable Guidance To Determine Nonattainment Area Designations and Boundaries for the 2006 24-Hour $PM_{2.5}$ NAAQS?

Section 107(d)(1)(A)(i) of the CAA defines a nonattainment area as any area that does not meet an ambient air quality standard, or that contributes to ambient air quality in a nearby area that does not meet the standard. If an area meets either prong of this definition, then EPA is required to designate the area as ''nonattainment.'' In June 2007, EPA issued guidance concerning how to determine boundaries for nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS (the 2007 Guidance).[14] As part of the 2007 Guidance, EPA recommended that the three most recent calendar years of air quality monitoring data for $PM_{2.5}$ be used to identify a violation of the 2006 24-hour $PM_{2.5}$ NAAQS. This is appropriate because the form of the 24-hour $PM_{2.5}$ NAAQS is calculated over a 3-year period. For the final designations, EPA has identified violating monitors based on air quality monitoring data from Federal Reference Method (FRM) monitors for calendar years 2006–2008.

By definition, areas may need to be designated nonattainment because they contribute to violations in another nearby area, even if they do not themselves have a monitor with violating data, or even if they do not have any monitor at all. As a result, states, tribes, and EPA need to consider additional relevant information in order to assess contributing areas as part of identifying the appropriate boundaries for nonattainment areas. Thus, in the 2007 Guidance, EPA recommended nine factors that pertained to types of information that EPA considered relevant for designations, and indicated that it would evaluate these factors along with any other relevant information or circumstances specific to a particular area, in determining appropriate nonattainment area boundaries.

EPA also noted in the 2007 Guidance that, in making boundary recommendations for nonattainment areas, states and tribes should evaluate each area on a case-by-case basis. EPA intentionally did not attempt to create any bright line test or threshold for any factor or form of information. EPA believes that section 107(d) does not require any such bright lines or thresholds to determine contribution, and that to create one could result in over-inclusion or under-inclusion of areas in nonattainment areas, as compared to a more robust and fact-specific analysis of each area on its merits. This approach is especially appropriate for $PM_{2.5}$, given the multiple precursors, numerous sources, meteorological considerations, and need to distinguish between impacts of local and non-local sources at any given violating monitor.

Finally, EPA indicated that it would promulgate nonattainment area boundaries that cover a sufficiently large area to include both the area that violates the standard and the nearby areas that contribute to the violations, as required by section 107, to assure that nonattainment area plans developed for

[9] *See,* ''Memorandum For The Heads of Executive Departments and Agencies,'' from Rahm Emanuel, Assistant to the President and Chief of Staff, dated January 20, 2009.

[10] *See, American Farm Bureau Federation and National Pork Producers Council, et al.* v. *EPA,* 559 F.3d 512 (DC Cir. 2009).

[11] *See, Catawba et al.* v. *EPA,* No. 05–1064 and consolidated cases, decided July 7, 2009.

[12] Letter to Lisa Jackson, Administrator, U.S. EPA, dated February 6, 2009, from the American Lung Association, Clean Air Task Force, EarthJustice, Environmental Defense Fund, Natural Resources Defense Council, and Southern Environmental Law Center.

[13] Letter to Lisa Jackson, Administrator, U.S. EPA, dated March 6, 2009, from Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club.

[14] *See,* ''Area Designations for the Revised 24-Hour Fine Particle National Ambient Air Quality Standards,'' memorandum to Regional Administrators, Regions I–X, from Robert J. Meyers, Acting Assistant Administrator, OAR, dated June 8, 2007.

these areas would attain the NAAQS as expeditiously as practicable. Unlike the guidance for the 1997 $PM_{2.5}$ NAAQS designations, EPA did not recommend the metropolitan area boundaries established by the U.S. Office of Management and Budget (OMB) as a rebuttable presumption for designations for the 2006 24-hour $PM_{2.5}$ NAAQS in the 2007 Guidance. Given the differences in the form of the standards between a 24-hour and an annual standard, EPA was less certain that such a presumption would be appropriate for all areas. For existing $PM_{2.5}$ nonattainment areas, based on early technical analyses of $PM_{2.5}$ composition and contributing source types, combined with an understanding of the existing $PM_{2.5}$ nonattainment areas, EPA noted its anticipation that the same boundaries established for implementing the 1997 annual $PM_{2.5}$ NAAQS might also be appropriate for implementing the 2006 24-hour $PM_{2.5}$ NAAQS in areas where both standards are violated. EPA also observed that maintaining the same nonattainment area boundaries for both the 1997 annual standards and the 2006 24-hour standards could more easily facilitate overall air quality planning for attaining the suite of $PM_{2.5}$ standards.

Section 107(d)(1)(A)(i) of the CAA requires EPA to designate as nonattainment not only violating areas, but also nearby areas that contribute to those violations. As noted above, the statute does not, however, define key terms such are ''area,'' ''contributes,'' or ''nearby.''

With respect to the term ''contributes,'' EPA believes that this term does not mean ''cause.'' The term ''contributes'' indicates that those areas with emissions that add to the aggregate ambient pollution recorded by a given monitor might be appropriate for inclusion in a nonattainment area. To interpret the term contribute to mean ''cause'' would be to require a degree of certainty and precision that is inherently unreasonable for evaluating violations that result from the impact of emissions from many different sources of $PM_{2.5}$ and $PM_{2.5}$ precursors, and would simultaneously undermine the purpose of designations by excluding every area with emissions that added to the aggregate problem, yet did not individually ''cause'' the violation. EPA also has concluded that a bright line test or threshold for what would constitute contribution for purposes of designations is not appropriate for the 2006 24-hour $PM_{2.5}$ NAAQS. Such an approach could result in over- or under-inclusive areas, compared to robust analysis of the facts and circumstances of each area. Similarly, EPA does not interpret the term ''contributes'' to mean ''significantly contributes,'' and does not believe that precise quantification of the contribution to violations in a nearby area is necessary or appropriate for designations. EPA generally agrees that areas with no sources of emissions, or areas that are otherwise demonstrated not to be contributing to violations, need not be included in a designated nonattainment area. However, EPA has concluded that the assessment of the ''causation'' and ''materiality'' of contribution to nearby violations is best accomplished through a more careful evaluation of the relevant information on an area-by-area basis.

As to what areas should be considered ''nearby,'' EPA believes that this term must likewise be viewed in light of the specific pollutant at issue. In the case of the 2006 24-hour $PM_{2.5}$ NAAQS, this entails consideration of the relatively long distances across which $PM_{2.5}$ and $PM_{2.5}$ precursors can be transported, but balanced with a key purpose of designations, which is to identify those nearby or local contributing areas that properly should be included within a designated nonattainment area to ensure the development of an appropriate SIP for the area. Thus, EPA's guidance also does not provide a bright line or threshold or specific geographic distance for what constitutes a ''nearby'' area. The determination of which areas are nearby, for purposes of designations, requires an evaluation of the facts and circumstances of each area. EPA considered the geography of each area, meteorological data, chemical speciation data, and other relevant information in light of the significant distances across which $PM_{2.5}$ and $PM_{2.5}$ precursors can be transported. EPA has used this process to identify those nearby areas with emissions that contribute to the violations and to distinguish these emissions from more distant or regional sources that are not appropriate for inclusion within the nonattainment area. In particular, EPA does not believe that the term ''nearby'' requires that the area be contiguous with the violating area or the remainder of the nonattainment area, if the facts support such a conclusion for a given area.

As to the term ''area,'' EPA concluded that it also should be interpreted as appropriate to the specific NAAQS at issue. In drawing nonattainment areas boundaries, EPA started with county boundaries as the basic jurisdictional element, consistent with past designation practice. Although EPA determined that county boundaries are a useful starting point, relevant facts and circumstances could support making partial county boundary designations for violating or contributing counties in a given area.

EPA began its technical analyses by first identifying violating monitors. In evaluating areas potentially contributing to a monitored violation, EPA initially examined those counties located in the surrounding metropolitan statistical area (i.e., the core-based statistical area (CBSA)) and those counties one to two adjacent rings beyond the metropolitan area. In its Notice on Standards for Defining Metropolitan and Micropolitan Areas (65 FR 82228, December 27, 2000), the Office of Management and Budget (OMB) notes that the general concept of a metropolitan statistical area is that of ''an area containing a recognized population nucleus and adjacent communities that have a high degree of integration with that nucleus.'' Further, the metropolitan statistical area serves as a ''statistical representation of the social and economic linkages between an urban core and outlying, integrated areas.'' Because of the inherent linkage between air pollution and pollution-producing human and economic activity, EPA believes that the CBSA, plus one to two adjacent rings beyond the metropolitan area, is an appropriate starting point for evaluation of contributing areas.[15]

EPA evaluated the types of information recommended in the 2007 Guidance, as well as other relevant information that states or tribes provided or that became available, in determining appropriate nonattainment area boundaries. The nine factors EPA recommended in the 2007 Guidance are: (1) Emissions data, (2) air quality data, (3) population density and degree of urbanization including commercial development in included versus excluded areas, (4) traffic and commuting patterns, (5) expected growth (including extent, pattern and rate of growth), (6) meteorology (weather/transport patterns), (7) geography/topography (e.g., mountain ranges or other air basin boundaries), (8) jurisdictional boundaries (e.g., counties, air districts, Reservations), and (9) level of existing controls on emission sources. This was neither a mandatory nor an exclusive list of types of relevant

[15] This consideration is important because EPA needs a reasonable method to distinguish between the ''local'' and the ''non-local'' or ''regional'' components of ambient fine particles at a violating monitor. Section 107(d) directs EPA to include those ''nearby'' areas that contribute, and therefore are logically appropriate for inclusion in the designated nonattainment area, whereas other sections of the CAA better address the regional element of a nonattainment problem, such as section 110(a)(2)(D) and section 126.

information, and was intended by EPA only as guidance concerning the types of information that might be appropriate for consideration in a given area. These factors are by their nature general and open ended, and EPA intended them to facilitate analysis of each area on its specific facts. Some factors were more relevant or important in some areas than in others in establishing the boundaries of a given area.

As part of the technical analysis, EPA also used an analytical tool to produce a metric referred to as the ''contributing emissions score'' (CES). The CES takes into consideration emissions data, meteorological data, and air quality monitoring information to provide a relative ranking of the potential contribution from counties near a specific county with a violating monitor. EPA did not use this metric as the exclusive way of considering data for these three factors, nor as the single deciding factor for determining designations. The CES was merely an additional method for evaluating the potential contribution of nearby counties.[16]

To evaluate an area, EPA also used additional data and analytical tools as appropriate, including speciated $PM_{2.5}$ data, area maps, and tools for assessing wind patterns. For purposes of determining appropriate nonattainment area boundaries, EPA examined data from $PM_{2.5}$ speciation monitors, where available, in addition to the ambient $PM_{2.5}$ concentration data from FRM monitors. The speciated $PM_{2.5}$ data indicated the relative proportions of specific types of particles at monitors (e.g., SO_2, NO_3, carbonaceous, or crustal particles). These data provided insights as to likely sources of emissions contributing to the ambient $PM_{2.5}$ concentrations at the violating monitor on days with high $PM_{2.5}$ levels, thus allowing EPA to better evaluate which, if any, of the nearby areas were contributing to the ambient $PM_{2.5}$ concentrations at the violating monitor.

EPA used maps of each area that depicted key geographic information. These maps portrayed relevant information such as the locations of FRM monitors and their design values, jurisdictional boundaries, topographic features, major transportation arteries, major emission sources, and existing nonattainment boundaries for other NAAQS. The maps assisted in the evaluation of basic information such as the directions and distances between monitors and sources and the locations of jurisdictional boundaries.

EPA also assessed wind pattern data through the development and use of ''pollution roses'' that depict monitoring data and meteorological data for monitors in each area. In some cases, where a more detailed assessment of air movement was thought to provide additional relevant information, EPA also used wind trajectory analyses. These tools for assessing wind movement and pollutant concentrations provided further information on likely emission sources contributing to $PM_{2.5}$ levels at monitors on days at or near the level of the 24-hour $PM_{2.5}$ NAAQS.

In evaluating emissions in areas under consideration for their contribution, EPA generally relied on the best county-level emissions inventory information available. In some areas, EPA reviewed whether significant pollution controls that would be installed in the near-term and with certainty at a specific source or sources, could be relevant to evaluating whether that area is contributing to violations in an adjacent area. EPA examined this type of information when states provided the requisite data and requested its evaluation as part of the process. EPA considered such information on a case-by-case basis, with attention to whether the controls in question would dramatically reduce the emissions of $PM_{2.5}$ and all $PM_{2.5}$ precursors, the timing of such controls, and the federal enforceability of such controls. EPA considered only controls that would be in place no later than December 2008 (i.e., controls resulting in emissions reductions during the last year of the period for which air quality monitoring data was relevant).

By contrast, EPA did not rely on planned or potential emissions reduction strategies through measures such as the Clean Air Interstate Rule, in making nonattainment designations, even if those strategies might help an area attain the standards in the future. The Agency recognizes that air quality modeling of future emissions reductions (e.g., from state and/or national programs) may indicate that some areas with a violating monitor based upon 2006–2008 data may come into attainment in the future. However, the present tense formulation of section 107(d) indicates that EPA should make nonattainment designations based on current data.[17] Future potential reductions, especially those that are at this time speculative or uncertain, are not appropriate for consideration in the designations context. Such programs might, however, be an appropriate consideration in the development of SIPs for designated nonattainment areas, if they otherwise meet statutory and regulatory requirements.

In order to identify the appropriate boundaries for nonattainment areas, EPA considered the county boundary as the basic jurisdictional element for determining area boundaries, consistent with past designation practice. The Agency believes that such county boundaries are generally an appropriate boundary because they are easily recognized jurisdictional boundaries with indisputable legal descriptions. County boundaries are often the boundaries for the legal jurisdiction of local governments or air quality planning organizations that are responsible for air quality management.

In most cases, if a $PM_{2.5}$ monitor was violating the NAAQS, EPA designated the entire county in which that monitor is located as nonattainment. EPA also often included whole nearby counties that it determined to be contributing to $PM_{2.5}$ levels at the violating monitor. In some cases, however, EPA determined that only part of a county (e.g., the part of the county that contained the sources of contributing emissions) was contributing to the violation at the monitor. In those instances, EPA designated only that portion of the county nonattainment and, to the extent possible, relied on recognized governmental boundaries for smaller geographic areas that encompassed the relevant emission sources (e.g., townships).

For example, in some cases, EPA determined that the emissions from a large individual source such as a power plant were contributing to violations in a nearby area. If EPA's assessment identified little or no other emissions or emitting activity elsewhere in the county (based on assessment of factors such as emissions, population, and commuting), EPA concluded that it was appropriate to designate as nonattainment only the portion of the county where the large individual

[16] The CES only provides relative contribution within the area under evaluation and does not provide a reliable means for comparison between counties in different areas. A more detailed description of the CES can be found at *http://www.epa.gov/ttn/naaqs/pm/pm25_2006_techinfo.html#C.* and in the technical support document (TSD) [Docket ID NO. EPA–HQ–OAR–2007–0562].

[17] While EPA cannot consider projected future attainment in determining current designations, nonattainment areas that are meeting the NAAQS but are not yet redesignated to attainment can use EPA's Clean Data Policy to streamline the required planning process. *See* ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards'' memorandum to Air Division Directors, Regions I–X from Stephen Page, Director, Office of Air Quality Planning and Standards, December 14, 2004.

source is located, even if that portion is not contiguous with the remainder of the nonattainment area. The Agency adopted this approach for areas where EPA determined it to be inappropriate to include portions of a county merely because those portions were located between, and contiguous with, the large stationary source and the remainder of the designated nonattainment area. In most cases, EPA selected boundaries for these noncontiguous portions of nonattainment areas by relying on legally recognized governmental boundaries (e.g., townships, tax districts, or census blocks) in which the source is located.

EPA also determined partial county boundaries to be appropriate for some areas where a topographic feature, such as a mountain range, helps to define the airshed in which the violation of $PM_{2.5}$ standards occurs, or separates contributing from non-contributing areas. In some areas, EPA determined that only a portion of a county was determined to be contributing, due to such a topographic barrier. In a few cases, especially in the West, an area with a violating monitor was topographically isolated from other portions of a much larger county or borough with few or no sources of emissions. EPA considered a partial county to be appropriate for such areas and selected boundaries based on topography, using recognized governmental boundaries (e.g., township ranges), where possible.

Where topography was not an isolating feature, EPA considered the geographic location of the sources of $PM_{2.5}$ and $PM_{2.5}$ precursors in the area, and other relevant information, such as chemical speciation data and meteorological data, in determining if a partial county boundary was technically justified and appropriate. EPA also considered a partial county boundary for violating counties in situations where a unique situation is shown to exist, in which the sources encompassed by a partial county boundary could account for nearly all of the total fine particle mass from local sources on days with a monitored exceedance. In such areas, given compelling evidence, EPA considered designations of partial violating counties to be appropriate. These areas are typically in the mountainous portions of the West, where emissions activity in a relatively small and isolated geographic area is surrounded by large areas that are largely unpopulated and otherwise lack sources that could contribute to the monitored violations. EPA notes that the 24-hour averaging period of the 2006 24-hour $PM_{2.5}$ NAAQS was an important consideration in these areas. EPA selected the boundaries for these areas by relying on legally recognized governmental boundaries (e.g., townships) in which the contributing sources are located.

EPA analyzed the information provided by each state or tribe in its recommendation letter, subsequently submitted information, and any other pertinent information available to EPA, in order to determine whether a county or part of a county should be designated nonattainment. EPA evaluated each state's or tribe's designation recommendation in light of the recommended nine factors, and any other relevant information, including, for example, the CES, $PM_{2.5}$ speciation data, and wind pattern data, bringing to bear our best technical and policy judgment. If, as a result of the evaluation, EPA concluded that a county or part of a county contributes to the violation in a nearby area with a violating monitor, EPA included the county or part of the county in the nonattainment area.

VIII. What Areas is EPA Designating Nonattainment for the 2006 24-Hour $PM_{2.5}$ NAAQS?

Following the process described above, EPA is designating the 31 areas in *Table 1* below, comprised of one or more entire counties or partial counties, as nonattainment areas for the 2006 24-hour $PM_{2.5}$ NAAQS.

TABLE 1—AREAS DESIGNATED NONATTAINMENT FOR THE 2006 24-HOUR $PM_{2.5}$ NAAQS

Allentown, PA
Birmingham, AL
Canton-Massillon, OH
Charleston, WV
Chico, CA
Cleveland-Akron-Lorain, OH
Detroit-Ann Arbor, MI
Fairbanks, AK
Harrisburg-Lebanon-Carlisle-York, PA
Imperial County, CA
Johnstown, PA
Klamath Falls, OR
Knoxville-Sevierville-La Follette, TN
Lancaster, PA
Liberty-Clairton, PA
Logan, UT-ID
Los Angeles-South Coast Air Basin, CA
Milwaukee-Racine, WI
New York-N. New Jersey-Long Island, NY-NJ-CT
Nogales, AZ
Oakridge, OR
Philadelphia-Wilmington, PA-NJ-DE
Pittsburgh-Beaver Valley, PA
Provo, UT
Sacramento, CA
Salt Lake City, UT
San Francisco Bay Area, CA
San Joaquin Valley, CA
Tacoma, WA
Steubenville-Weirton, OH-WV
Yuba City-Marysville, CA

EPA's specific analysis of these areas, including the determination of the appropriate nonattainment area boundaries for each of these areas, is described in detail in the TSD, with additional information provided in the Supplemental TSD. Both documents are located in the docket for this action. In addition, the letters containing the initial state or tribal recommendations for each of these areas, any EPA modification to those recommendations, and any additional information provided by the state or tribe in response to EPA modifications, is also located in the docket. The specific area or areas within the boundaries for each of these designated nonattainment areas is described in the amendments to 40 CFR part 81 below, and is graphically portrayed in the maps located in the docket for this action.

IX. How Has EPA Used 2008 Air Quality Data?

In December 2008, EPA identified 58 areas as violating the 2006 24-hour $PM_{2.5}$ NAAQS based on air quality monitoring data for the 2005–2007 time period. In the 2007 Guidance, EPA recommended that designation decisions be based on the most recent three years of data available. In the December 2008 notice, which was not published in the **Federal Register** in order to allow additional Agency review, and in communications with states and tribes, EPA had indicated that it would consider state requests to include consideration of 2008 air quality monitoring data for specific areas prior to the effective date of designations under certain circumstances. Due to the delay in the designations, however, EPA now has received and reviewed quality assured, state-certified 2008 air quality monitoring data for all areas.

EPA continues to believe that inclusion of the most recent air quality monitoring data available is appropriate for designation decisions. Thus, EPA is designating as attainment those areas for which complete, quality assured, certified air quality monitoring data for the 2006–2008 time period show attainment of the 2006 24-hour $PM_{2.5}$ NAAQS throughout the area. EPA is not reconsidering the boundaries for the

areas identified as nonattainment in December 2008 and for which consideration of 2006–2008 air quality data does not change the overall status of the area. The boundaries EPA identified in December 2008 were based upon thorough consideration of the relevant information by EPA. EPA believes that it is appropriate to rely on the 2008 air quality monitoring data and the extensive information and analyses used in the decision making process that spanned the period from approximately June 2007–December 2008. EPA does not believe that the introduction of additional non-air quality information into the process at this time would yield different designation outcomes; and, in fact doing so would cause unjustified delay in issuing these final designations based upon 2006–2008 air quality monitoring data.

Consideration of 2006–2008 air quality monitoring data reduced the number of areas violating the 2006 24-hour $PM_{2.5}$ NAAQS from 58 to 31. *Table 2* provides a list of the 26 areas that changed from nonattainment to attainment and their design values for 2005–2007 and 2006–2008. For one area no longer violating the 2006 24-hour $PM_{2.5}$ NAAQS based on 2006–2008 data, York County, PA, EPA concluded that it nevertheless contributes to violations in another nearby violating area, Harrisburg-Lebanon-Carlisle, PA, and thus EPA has included York County, PA in that nonattainment area. Five of the areas that changed from a designation status of nonattainment to attainment had one or more monitors with incomplete data for 2006–2008. However, data from the highest design value monitor for the area in 2005–2007, as well as other monitors, are complete and show attainment of the 24-hour $PM_{2.5}$ NAAQS for 2006–2008. As explained in detail in the Supplemental TSD, based on the relative values of the various monitors, EPA believes it is reasonable to expect that, if the incomplete site had complete 2006–2008 data, it would have a design value equal to or lower than the other sites with complete data that are attaining the NAAQS based on the 2006–2008 data. The additional technical information to support the change in status for all of the areas, including the supporting evaluation for the inclusion of York County in the Harrisburg-Lebanon-Carlisle, PA nonattainment area and for the five areas noted above, is included in the Supplemental TSD, which is located in the docket for this action.

TABLE 2—PREVIOUSLY VIOLATING AREAS NOW ATTAINING THE 24-HOUR $PM_{2.5}$ NAAQS BASED ON 2006–2008 DATA

Area name	$PM_{2.5}$ 2005–2007 24-hr design value	$PM_{2.5}$ 2006–2008 24-hr design value
Baltimore, MD	37	35
Chicago-Gary-Lake County, IL-IN	40	35
Cincinnati-Hamilton, OH-KY-IN	41	35
Clarksville, TN-KY	38	32
Columbus, OH	38	32
Davenport-Moline-Rock Island, IA-IL	37	34
Dayton-Springfield, OH	37	32
Evansville, IN	36	30
Grand Rapids, MI	36	29
Green Bay, WI	37	35
Huntington-Ashland, WV-KY-OH	37	32
Indianapolis, IN	40	35
Juneau, AK	36	34
Lafayette-Frankfort, IN	36	29
Libby, MT	41	34
Louisville, KY-IN	39	35
Madison-Baraboo, WI	37	34
Morgantown, WV	36	34
Muscatine, IA	36	35
Paducah-Mayfield, KY-IL	36	32
Parkersburg-Marietta, WV-OH	37	34
Pinehurst, ID	37	34
Reading, PA	38	34
St. Louis, MO-IL	39	35
Vincennes, IN	36	30
Youngstown, OH	36	32

EPA's evaluation of 2006–2008 air quality monitoring data also indicated that monitors in three areas which had not violated the 2006 24-hour $PM_{2.5}$ NAAQS based on 2005–2007 data now violate those standards based on 2006–2008 data. These monitors are located in Pinal County, AZ (2006–2008 24-hour design value of 48); Plumas County, CA (2006–2008 24-hour design value of 49); and, Shasta County, CA (2006–2008 24-hour design value of 48). In this notice, EPA is not finalizing initial designations for these newly violating areas. Because these areas are newly violating the 2006 24-hour $PM_{2.5}$ NAAQS, EPA and the states and tribes in these areas need further information in order to determine the appropriate nonattainment area boundaries for these areas, in accordance with the process that EPA has used for other nonattainment area designations, as provided by section 107(d).

Because EPA has information indicating that there is a violation in each of these areas, a designation of ''unclassifiable'' is not appropriate under section 107(d)(1)(A)(iii). Notwithstanding data indicating violations of the 24-hour $PM_{2.5}$ NAAQS, EPA has insufficient information to determine the necessary boundaries for these areas. Accordingly, EPA will use the additional time available to it under section 107(d)(1)(B) to assess these

areas, complete evaluation of any pending exceptional event claims, and promulgate initial designations for these areas. Consistent with the approach used to assess other potential nonattainment areas, EPA intends to evaluate relevant technical data for the ring of counties immediately surrounding the violating county to determine whether any of these nearby counties contribute to the violation. EPA is deferring the designations for these counties for the 2006 24-hour $PM_{2.5}$ NAAQS so that EPA can collect additional information sufficient to assess these areas before promulgating these designations. We recognize that these are large geographical areas. Including all counties surrounding the county with the violating monitor is only a starting point for the evaluation; it should not be assumed that the final designated nonattainment area will include all of these counties. *Table 3* provides a list of the counties with violating monitors and the additional nearby areas that EPA believes should be evaluated for potential contribution to those violations.

EPA will work with the relevant states and tribes to finalize the designations for these counties over the next several months. EPA will send letters notifying the states and tribes in question that EPA believes a modification is now necessary to the initial recommendations they made for these areas. Each state and tribe will thereafter have an opportunity to respond to EPA's proposed designations and boundaries. Pursuant to section 107(d), EPA cannot promulgate the designation for these areas less than 120 days from the date of the EPA modification letter. EPA will promulgate the designations for these areas by a separate final rule.

TABLE 3—COUNTIES WITH NEWLY VIOLATING MONITORS FOR THE 24-HOUR $PM_{2.5}$ NAAQS (BASED ON 2006–2008 DATA) AND POTENTIALLY CONTRIBUTING COUNTIES

Pinal County, AZ	Plumas County, CA	Shasta County, CA
Cochise County, AZ	Butte County, CA (part)	Lassen County, CA
Gila County, AZ	Lassen County, CA	Modoc County, CA
Graham County, AZ	Shasta County, CA	Plumas County, CA
La Paz County, AZ	Sierra County, CA	Siskiyou County, CA
Maricopa County, AZ	Tehama County, CA	Tehama County, CA
Pima County, AZ	Yuba County, CA (part)	Trinity County, CA
Yavapai County, AZ		
Yuma County, AZ		

The quality assured, certified air quality monitoring data for 2006–2008 also indicate that two counties that EPA designated in 2005 as attainment for the 1997 annual $PM_{2.5}$ NAAQS now have monitors which are potentially violating that NAAQS.[18] These counties are Pinal County, AZ (2006–2008 annual average design value of 21.6) and Harris County, TX (2006–2008 annual average design value of 15.2). Consequently, EPA intends to initiate the redesignation process under section 107(d)(3) for these areas for the 1997 annual $PM_{2.5}$ NAAQS. EPA will work with the relevant states and tribes to evaluate the air quality data and other technical information in order to determine whether these areas should be redesignated to nonattainment, and if so, the appropriate boundaries for those nonattainment areas. EPA will promulgate these redesignations by a later final rule.

[18] In the 2006 revision of the PM NAAQS, the level of the annual standard remained unchanged at 15 μg/m3. Petitioners challenged this decision. On February 24, 2009, the U.S. Court of Appeals for the DC Circuit remanded the annual $PM_{2.5}$ standard to the Agency for reconsideration on the basis that EPA did not adequately explain why retaining this level would be sufficient to protect public health. To address those areas now violating the 1997 annual $PM_{2.5}$ NAAQS, EPA intends to initiate redesignations, as appropriate.

X. How Do Designations Affect Indian Country?

All full counties, partial counties or Air Quality Control Regions listed in the Part 81 table at the end of this document are designated as indicated, and include Indian Country geographically located within such areas, except as otherwise indicated in the table.

In general, and consistent with relevant air quality information, EPA intends to include Indian Country encompassed within the nonattainment area, in order to protect public health and welfare. In most cases, relevant air quality information will indicate that areas of Indian Country located within a nonattainment area should have the same designation as the surrounding area. *See* discussion above about tribal responsibility.

EPA does not recognize state recommendations for area designations as applying to Indian country. However, the conditions that support a state's designation recommendation, such as air quality data at the location of the sources, may indicate the likelihood that similar conditions exist in adjacent Indian Country. States generally have neither the responsibility nor the authority for planning and regulatory activities under the CAA in Indian country.

XI. Where Can I Find Information Forming the Basis for This Rule and Exchanges Between EPA, States, and Tribes Related to This Rule?

Information providing the basis for this action and related decisions are provided in the TSD, response to comments documents, and other information in the docket. The TSD, applicable EPA guidance memoranda, copies of correspondence regarding this process between EPA and the states, tribes, and other parties, and EPA's responses to comments, are available for review at the EPA Docket Center listed above in the **ADDRESSES** section of this document and on our designation Web site at *http://www.epa.gov/pmdesignations/2006standards/index.htm*. Other related state specific information is available at the EPA Regional Offices.

XII. Statutory and Executive Order Reviews

Upon promulgation of a new or revised NAAQS, the CAA requires EPA to designate areas as attaining or not attaining the NAAQS. The CAA then specifies requirements for areas based on whether such areas are attaining or not attaining the NAAQS. In this final rule, EPA assigns designations to areas as required.

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

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.* Burden is defined at 5 CFR 1320.3(b). This rule responds to the requirement to promulgate air quality designations after promulgation of a NAAQS. This requirement is prescribed in the CAA section 107 of title 1. The present final rule does not establish any new information collection apart from that required by law.

C. Regulatory Flexibility Act

This final rule is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because the rule is not subject to the APA and is subject to CAA section 107(d)(2)(B), which does not require that the Agency issue a notice of proposed rulemaking before issuing this rule.

D. Unfunded Mandates Reform Act

This action contains no federal mandate under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. It does not create any additional requirements beyond those of the $PM_{2.5}$ NAAQS (40 CFR 50.13), therefore, no UMRA analysis is needed. This rule establishes the application of the $PM_{2.5}$ standard and the designation for each area of the country for the $PM_{2.5}$ NAAQS. The CAA requires states to develop plans, including control measures, based on their designations and classifications.

One mandate that may apply as a consequence of this action to all designated nonattainment areas is the requirement under CAA section 176(c) and associated regulations to demonstrate conformity of federal actions to SIPs. These rules apply to federal agencies and Metropolitan Planning Organizations making conformity determinations. The EPA concludes that such conformity determinations will not cost $100 million or more in the aggregate.

The EPA believes that any new controls imposed as a result of this action will not cost in the aggregate $100 million or more annually. Thus, this federal action will not impose mandates that will require expenditures of $100 million or more in the aggregate in any one year.

Nonetheless, EPA carried out consultation with government entities affected by this rule, including states, tribal governments, and local air pollution control agencies.

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, or 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. 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 CAA establishes the process whereby states take the lead in developing plans to meet the NAAQS. This rule will not modify the relationship of the states and EPA for purposes of developing programs to implement the NAAQS. 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 2, 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 action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule concerns the designation and classification of areas as attainment and nonattainment for the $PM_{2.5}$ national ambient air quality standards. The CAA provides for states and eligible tribes to develop plans to regulate emissions of air pollutants within their areas based on their designations. The TAR provides tribes the opportunity to apply for eligibility to develop and implement CAA programs such as programs to attain and maintain the $PM_{2.5}$ NAAQS, but it leaves to the discretion of the tribe the decision of whether to apply to develop these programs and which programs, or appropriate elements of a program, the tribe will seek to adopt. This rule does not have a substantial direct effect on one or more Indian tribes. It does not create any additional requirements beyond those of the $PM_{2.5}$ NAAQS (40 CFR 50.13). This rule establishes the application of the $PM_{2.5}$ standard and the designation and classification for each area of the country for the $PM_{2.5}$ NAAQS. Additionally, no tribe has implemented a CAA program to attain the $PM_{2.5}$ NAAQS at this time. Furthermore, this rule does not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the TAR establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and this rule does nothing to modify that relationship. Because this rule does not have tribal implications, Executive Order 13175 does not apply.

Although Executive Order 13175 does not apply to this rule, EPA communicated with tribal leaders and environmental staff regarding the designations process. EPA also sent individualized letters to all federally recognized tribes to explain the designation process for the 2006 24-hour $PM_{2.5}$ NAAQS, to provide the EPA designations guidance, and to offer consultation with EPA. EPA provided further information to tribes through presentations at the National Tribal

Forum and through participation in National Tribal Air Association conference calls. EPA also sent individualized letters to all federally recognized tribes about EPA's intended area designations for the 24-hour $PM_{2.5}$ standards and offered tribal leaders the opportunity for consultation. These communications provided opportunities for tribes to voice concerns to EPA about the general designations process for the 24-hour $PM_{2.5}$ NAAQS, as well as concerns specific to a tribe, and informed EPA about key tribal concerns regarding designations as the rule was under development.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

The action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe that the environmental health risks or safety risks addressed by this rule present a disproportionate risk or safety risk to children. Nonetheless, we have evaluated the environmental health or safety effects of the $PM_{2.5}$ NAAQS on children. The results of this risk assessment are contained in the NAAQS for the 2006 24-hour $PM_{2.5}$, Final Rule (October 17, 2006, 71 FR 61144).

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (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 (NTTAA)

Section 12(d) of the NTTAA of 1995, Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This action does not involve technical standards. Therefore, EPA did not consider the use of any VCS.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

The EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because this rule does not affect the level of protection provided to human health or the environment.

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 U.S. The 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 U.S. 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). This rule will be effective December 14, 2009.

L. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit: (i) When the agency action consists of ''nationally applicable regulations promulgated, or final actions taken, by the Administrator,'' or (ii) when such action is locally or regionally applicable, if ''such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination.''

This rule designating areas for the 2006 24-hour $PM_{2.5}$ NAAQS is ''nationally applicable'' within the meaning of section 307(b)(1). This rule establishes designations for areas across the U.S. for the 2006 24-hour $PM_{2.5}$ NAAQS. At the core of this rulemaking is EPA's interpretation of the definition of nonattainment under section 107(d)(1) of the CAA. In determining which areas should be designated nonattainment (or conversely, should be designated attainment or unclassifiable), EPA used an analytical approach that it applied consistently across the U.S..

For the same reasons, the Administrator also is determining that the final designations are of nationwide scope and effect for the purposes of section 307(b)(1). This is particularly appropriate because, in the report on the 1977 Amendments that revised section 307(b)(1) of the CAA, Congress noted that the Administrator's determination that an action is of ''nationwide scope or effect'' would be appropriate for any action that has a scope or effect beyond a single judicial circuit. H.R. Rep. No. 95–294 at 323, 324, *reprinted* in 1977 U.S.C.C.A.N. 1402–03. Here, the scope and effect of this rulemaking extends to numerous judicial circuits since the designations apply to all areas of the country. In these circumstances, section 307(b)(1) and its legislative history calls for the Administrator to find the rule to be of ''nationwide scope or effect'' and for venue to be in the DC Circuit.

Thus, any petitions for review of final designations must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: October 8, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons set forth in the preamble, 40 CFR part 81, subpart C is amended as follows:

PART 81—DESIGNATIONS OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart C—Section 107 Attainment Status Designations

■ 2. Section 81.300 is amended by revising paragraph (a) to read as follows:

§ 81.300 Scope.

* * * * *

(a) Attainment status designations as approved or designated by the Environmental Protection Agency (EPA) pursuant to section 107 of the CAA are listed in this subpart. Area designations are subject to revision whenever sufficient data become available to warrant a redesignation. Both the state and EPA can initiate changes to these designations, but any state redesignation request must be submitted to EPA for concurrence. The EPA has replaced the national ambient air quality standards for particulate matter measured as total suspended particulate with standards measured as particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). Accordingly, area designations for PM–10 are included in the lists in subpart C of this part. However, the TSP area designations will also remain in effect until the Administrator determines that the designations are no longer necessary for implementing the maximum allowable increases in concentrations of particulate matter pursuant to section 163(b) of the CAA, as explained in paragraph (b) of this section. The EPA has also added national ambient air quality standards for fine particulate matter measured as particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ($PM_{2.5}$). Accordingly, area designations for $PM_{2.5}$ are included in the lists in subpart C of this part.

* * * * *

■ 2a. Section 81.301 is amended as follows:

■ a. By revising the table heading for ''Alabama—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Alabama—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.301 Alabama.

* * * * *

Alabama—$PM_{2.5}$ (Annual NAAQS)

* * * * *

ALABAMA—$PM_{2.5}$

[24-hour NAAQS]

Designation area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Birmingham, AL:				
Jefferson County		Unclassifiable/Attainment		Nonattainment.
Shelby County		Unclassifiable/Attainment		Nonattainment.
Walker County (part)		Unclassifiable/Attainment		Nonattainment.
The area described by U.S. Census 2000 block group identifiers 01–127–0214–5, 01–127–0215–4, and 01–127–0216–2.				
Etowah County		Unclassifiable/Attainment		Unclassifiable.
Rest of State:				
Autauga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baldwin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barbour County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bibb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blount County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bullock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chambers County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Choctaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cleburne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coffee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colbert County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Conecuh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Covington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crenshaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cullman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeKalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elmore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Escambia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Geneva County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lamar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lauderdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.

ALABAMA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designation area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Limestone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lowndes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marengo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mobile County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pickens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Russell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Clair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Talladega County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tallapoosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tuscaloosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walker County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilcox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winston County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 3. Section 81.302 is amended as follows:

■ a. By revising the table heading for ''Alaska—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Alaska—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.302 Alaska.

* * * * *

Alaska—$PM_{2.5}$ (Annual NAAQS)

* * * * *

ALASKA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Fairbanks, AK:				
AQCR 09 Northern Alaska Intrastate:				
Fairbanks North Star Borough (part)		Unclassifiable/Attainment		Nonattainment.
The following townships and ranges: —MTRS F001N001—All Sections; —MTRS F001N001E—Sections 2–11, 14–23, 26–34; —MTRS F001N002—Sections 1–5, 8–17, 20–29, 32–36; —MTRS F001S001E—Sections 1, 3–30, 32–36; —MTRS F001S001W—Sections 1–30; —MTRS F001S002E—Sections 6–8, 17–20, 29–36; —MTRS F001S002W—Sections 1–5, 8–17, 20–29, 32–33; —MTRS F001S003E—Sections 31–32; —MTRS F002N001E—Sections 31–35; —MTRS F002N001—Sections 28, 31–36; —MTRS F002N002—Sections 32–33, 36; —MTRS F002S001E—Sections 1–2; —MTRS F002S002E—Sections 1–17, 21–24; —MTRS F002S003E—Sections 5–8, 18.				
Rest of State:				
AQCR 08 Cook Inlet Intrastate:				

ALASKA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Anchorage Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kenai Peninsula Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Matanuska-Susitna Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 09 Northern Alaska Intrastate:				
Denali Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fairbanks North Star Borough (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nome Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
North Slope Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northwest Arctic Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Southeast Fairbanks Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yukon-Koyukuk Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 10 South Central Alaska Intrastate:				
Aleutians East Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aleutians West Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bethel Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bristol Bay Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dillingham Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kodiak Island Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake and Peninsula Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valdez-Cordova Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wade Hampton Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 11 Southeastern Alaska Intrastate:				
Haines Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juneau Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ketchikan Gateway Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prince of Wales-Outer Ketchikan Census		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sitka Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.
Skagway-Hoonah-Angoon Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wrangell-Petersburg Census Area		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yakutat Borough		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 4. Section 81.303 is amended as follows:

■ a. By revising the table heading for ''Arizona—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Arizona—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.303 Arizona.

* * * * *

Arizona—$PM_{2.5}$ (Annual NAAQS)

* * * * *

ARIZONA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Nogales:				
Santa Cruz County (part)		Unclassifiable/Attainment		Nonattainment.
Nogales planning area bounded as follows: The portions of the following Townships which are within the State of Arizona and lie east of 111 longitude: T23S, R13E; T23S, R14E; T24S, R13E; T24S, R14E.				
Rest of State:				
Apache County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cochise County		Unclassifiable/Attainment.		
Coconino County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gila County		Unclassifiable/Attainment.		
Graham County		Unclassifiable/Attainment.		
Greenlee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Paz County		Unclassifiable/Attainment.		
Maricopa County		Unclassifiable/Attainment.		
Mohave County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Navajo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pima County		Unclassifiable/Attainment.		

ARIZONA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Pinal County		Unclassifiable/Attainment.		
Santa Cruz County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yavapai County		Unclassifiable/Attainment.		
Yuma County		Unclassifiable/Attainment.		

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 5. Section 81.304 is amended as follows:

■ a. By revising the table heading for ''Arkansas—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Arkansas—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.304 Arkansas.

* * * * *

Arkansas—$PM_{2.5}$ (Annual NAAQS)

* * * * *

ARKANSAS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 016 Central Arkansas Intrastate:				
Chicot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cleveland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Conway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Desha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Drew County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Faulkner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hot Spring County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lonoke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pope County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 017 Metropolitan Fort Smith Interstate:				
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sebastian County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 019 Monroe-El Dorado Interstate:				
Ashley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bradley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nevada County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ouachita County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 020 Northeast Arkansas Intrastate:				
Arkansas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Craighead County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cross County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Independence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mississippi County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Phillips County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Poinsett County		Unclassifiable/Attainment		Unclassifiable/Attainment.

ARKANSAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Prairie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Francis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sharp County		Unclassifiable/Attainment		Unclassifiable/Attainment.
White County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woodruff County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 021 Northwest Arkansas Intrastate:				
Baxter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cleburne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Izard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Searcy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Buren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 022 Shreveport-Texarkana-Tyler Interstate:				
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hempstead County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Little River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miller County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sevier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Memphis, TN-AR: (AQCR 018 Metropolitan Memphis Interstate):				
Crittenden County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 6. Section 81.305 is amended as follows:

■ a. By revising the table heading for ''California—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''California—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.305 California.

* * * * *

California—$PM_{2.5}$ (Annual NAAQS)

* * * * *

CALIFORNIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Chico, CA:				
Butte County (part)		Unclassifiable/Attainment		Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Butte County which lies west of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of the Butte-Yuba county line and the township line common to T18N R6E and T19N R6E, west to the township line common to T18N R6E and T19N R6E, then north along the range line common to R5E and R6E, then west along the township line common to T21N and T20N, then north along the range line common to R4E and R5E, then west along the township line common to T24N and T23N to the Butte-Tehama County boundary.				
Imperial County, CA:				
(part)		Unclassifiable/Attainment		Nonattainment.
That portion of Imperial County which lies within the line described as follows: (San Bernardino Base and Meridan) Beginning at the intersection of the United States-Mexico border and the southeast corner of T17S R11E, then north along the range line of the eastern edge of range R11E, then east along the township line of the southern edge of T12S to the northeast corner of T13S R15E, then south along the range line common to R15E and R16E, to the United States-Mexico border.				
Los Angeles-South Coast Air Basin, CA:				
Los Angeles County (part)		Nonattainment		Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Los Angeles County which lies south and west of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then North along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17 and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
Orange County		Nonattainment		Nonattainment.
Riverside County (part)		Nonattainment		Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Riverside County which lies to the west of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then north along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County Line (excluding the lands of the Santa Rosa Band of Cahuilla Mission Indians).				
That part of the lands of the Santa Rosa Band of Cahuilla Mission Indians which is excluded from the Riverside County (part) nonattainment area.	.....	Nonattainment	.....	Unclassifiable/Attainment.
San Bernardino County (part)	.....	Nonattainment	.....	Nonattainment.
That portion of San Bernardino County which lies south and west of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary.				
Sacramento, CA:				
El Dorado County (part)	.....	Unclassifiable/Attainment	.....	Nonattainment.
That portion of El Dorado County which lies west of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of El Dorado-Amador county line and the township line common to townships T8N R10E and T8N R11E, then north along the range line common to ranges R10E and R11E, then east along the township line common to T9N and T8N, then north along the range line common to ranges R12E and R13E, then west along the township line common to T12N and T11N, then north along the range line common to ranges R10E and R11E, then west along the township line common to T13N and T12N, then north along the range line common to ranges R9E and R10E, to the El Dorado-Placer County boundary.				
Placer County (part)	.....	Unclassifiable/Attainment	.....	Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Placer County which lies west of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of the Placer-El Dorado County line and the township line common to townships T12N R9E and T13N R9E, then running west along the township line common to townships T12N R9E and T13N R9E, then north along the range line common to ranges R8E and R9E, to the Placer-Nevada County boundary.				
Sacramento County		Unclassifiable/Attainment		Nonattainment.
Solano County (part)		Unclassifiable/Attainment		Nonattainment.
That portion of Solano County which lies north and east of a line described as follows: beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34; Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said ¼ section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West, thence east along a line common to Township 5 North and Township 6 North to the northeast corner of Section 3, Township 5 North, Range 1 East, thence south along section lines to the southeast corner of Section 10, Township 3 North, Range 1 East, thence east along section lines to the south ¼ corner of Section 8, Township 3 North, Range 2 East, thence east to the boundary between Solano and Sacramento Counties.				
Yolo County (part)		Unclassifiable/Attainment		Nonattainment.
That portion of Yolo County which lies east of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of Yolo-Solano County boundary and the range line of the eastern edge of township T8N R2W, north along the range line of the eastern edge of township T8N R2W, continuing north along the range line common to ranges R2W and R1W, to the Yolo-Colusa County boundary.				
San Francisco Bay Area, CA:				
Alameda County		Unclassifiable/Attainment		Nonattainment.
Contra Costa County		Unclassifiable/Attainment		Nonattainment.
Marin County		Unclassifiable/Attainment		Nonattainment.
Napa County		Unclassifiable/Attainment		Nonattainment.
San Francisco County		Unclassifiable/Attainment		Nonattainment.
San Mateo County		Unclassifiable/Attainment		Nonattainment.
Santa Clara County		Unclassifiable/Attainment		Nonattainment.
Solano County (part)		Unclassifiable/Attainment		Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Solano County which lies south and west of a line described as follows: Beginning at the intersection of the westerly boundary of Solano County and the ¼ section line running east and west through the center of Section 34, Township 6 North, Range 2 West, Mount Diablo Base and Meridian, thence east along said ¼ section line to the east boundary of Section 36, Township 6 North, Range 2 West, thence south ½ mile and east 2.0 miles, more or less, along the west and south boundary of Los Putos Rancho to the northwest corner of Section 4, Township 5 North, Range 1 West thence east along a line common to T5N and T6N to the northeast corner of Section 3, T5N, R1E, thence south along section lines to the southeast corner of Section 10, T3N, R1E, thence east along section lines to the south ¼ corner of Section 8, T3N, R2E, thence east to the boundary between Solano and Sacramento Counties.				
Sonoma County (part)	.....	Unclassifiable/Attainment	.....	Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Sonoma County which lies south and east of a line described as follows: Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive; thence running along said boundary of Rancho Canada de Jonive westerly, northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road, northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road; thence running northerly along said easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road; thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 North, M.D.M.; thence running easterly along said township line to its intersection with the boundary line between Sonoma and Napa Counties.				
San Joaquin Valley, CA:				
Fresno County	.....	Nonattainment	.....	Nonattainment.
Kern County (part)	.....	Nonattainment	.....	Nonattainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to R. 16 W. and R. 17 W., San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of Sec. 3, T11N, R17W; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon line to the southeast corner of Sec. 34, T32S, R30E Mount Diablo Base And Meridian; then north to the northwest corner of Sec. 35, T31S, R30E; then Northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Sec. 18, T. 31 S., R. 31 E.; then east to the southeast corner of Sec. 13, T. 31 S., R. 31 E.; then north along the range line common to R. 31 E. and R. 32 E., Mount Diablo Base and Meridian, to the northwest corner of Sec. 6, T. 29 S., R. 32 E.; then east to the southwest corner of Sec. 31, T. 28 S., R. 32 E.; then north along the range line common to R. 31 E. and R. 32 E. to the northwest corner of Sec. 6, T. 28 S., R. 32 E., then west to the southeast corner of Sec. 36, T. 27 S., R. 31 E., then north along the range line common to R. 31 E. and R. 32 E. to the Kern-Tulare County boundary.				
Kings County		Nonattainment		Nonattainment
Madera County		Nonattainment		Nonattainment.
Merced County		Nonattainment		Nonattainment.
San Joaquin County		Nonattainment		Nonattainment.
Stanislaus County		Nonattainment		Nonattainment.
Tulare County		Nonattainment		Nonattainment.
Yuba City-Marysville, CA:				
Sutter County		Unclassifiable/Attainment		Nonattainment.
Yuba County (part)		Unclassifiable/Attainment		Nonattainment.
That portion of Yuba County which lies west of the line described as follows: (Mount Diablo Base and Meridian) Beginning at the intersection of the Yuba-Nevada county line and the range line common to ranges R7E and R8E, north to the southeast corner of township T18N R7E, then west along the township line common to T17N and T18N, then north along the range line common to ranges R6E and R7E, then west along the township line common to T19N and T18N to the Yuba-Butte County boundary.				
Rest of State:				
North Coast Air Basin:				
Del Norte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Humboldt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mendocino County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sonoma County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Sonoma County which lies north and west of a line described as follows: Beginning at the southeasterly corner of the Rancho Estero Americano, being on the boundary line between Marin and Sonoma Counties, California; thence running northerly along the easterly boundary line of said Rancho Estero Americano to the northeasterly corner thereof, being an angle corner in the westerly boundary line of Rancho Canada de Jonive, thence running along said boundary of Rancho Canada de Jonive westerly; northerly and easterly to its intersection with the easterly line of Graton Road; thence running along the easterly and southerly line of Graton Road northerly and easterly to its intersection with the easterly line of Sullivan Road; thence running northerly along said easterly line of Sullivan Road to the southerly line of Green Valley Road; thence running easterly along the said southerly line of Green Valley Road and easterly along the southerly line of State Highway 116, to the westerly and northerly line of Vine Hill Road; thence running along the westerly and northerly line of Vine Hill Road, northerly and easterly to its intersection with the westerly line of Laguna Road; thence running northerly along the westerly line of Laguna Road and the northerly projection thereof to the northerly line of Trenton Road; thence running westerly along the northerly line of said Trenton Road to the easterly line of Trenton-Healdsburg Road to the easterly line of Eastside Road: thence running northerly along said easterly line of Eastside Road to its intersection with the southerly line of Rancho Sotoyome; thence running easterly along said southerly line of Rancho Sotoyome to its intersection with the Township line common to Townships 8 and 9 north, Mt. Diablo Base and Meridian; thence running easterly along said Township line to its intersection with the boundary line between Sonoma and Napa Counties, State of California.				
Trinity County	.....	Unclassifiable/Attainment.		
Northeast Plateau Air Basin:				
Lassen County	.....	Unclassifiable/Attainment.		
Modoc County	.....	Unclassifiable/Attainment.		
Siskiyou County	.....	Unclassifiable/Attainment.		
Lake County Air Basin:				
Lake County	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
Upper Sacramento Valley Region:				
Butte County (remainder)	.....	Unclassifiable/Attainment.		
Colusa County	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
Glenn County	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
Shasta County	.....	Unclassifiable/Attainment.		
Tehama County	.....	Unclassifiable/Attainment.		
Yuba County (remainder)	.....	Unclassifiable/Attainment.		
Sacramento Metropolitan Region:				
Yolo County (remainder)	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
Northern Mountain Counties:				
Nevada County	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Plumas County		Unclassifiable/Attainment.		
Sierra County		Unclassifiable/Attainment.		
Central Mountain Counties:				
Amador County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calaveras County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Southern Mountain Counties:				
Mariposa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tuolumne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake Tahoe Air Basin:				
El Dorado County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Placer County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
North Central Coast Air Basin:				
Monterey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Benito County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Santa Cruz County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Luis Obispo County:				
San Luis Obispo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Santa Barbara County:				
Santa Barbara County (part) excluding		Unclassifiable/Attainment		Unclassifiable/Attainment.
Channel Islands Ventura County:				
Ventura County (part) excluding Anacapa and San Nicolas Islands.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northern Channel Islands:				
Santa Barbara County (part) the islands located in the South Central Coast Air Basin, including San Miguel, Santa Rosa, Santa Cruz, and San Nicolas.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ventura County (part) Anacapa and San Nicolas Islands.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Great Basin Valleys Air Basin:				
Alpine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Inyo County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
That portion of Inyo County that Lies outside Hydrologic Unit Number 18090205.				
Mono County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coso Junction:				
Inyo County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
That portion of Inyo County that lies inside Hydrologic Unit Number 18090205.				
Eastern Kern County:				
Kern County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Kern County (with the exception of that portion in Hydrologic Unit Number 18090205—the Indian Wells Valley) east and south of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Liebre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; Then northwest Along the Rancho El Tejon line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
Indian Wells Valley:				
Kern County (part)	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
That portion of Kern County that lies inside Hydrologic Unit Number 18090205.				
Western Mojave Desert and Antelope Valley:				
Los Angeles County (part)	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
That portion of Los Angeles County which lies north and east of a line described as follows: Beginning at the Los Angeles-San Bernardino County boundary and running west along the Township line common to Township 3 North and Township 2 North, San Bernardino Base and Meridian; then north along the range line common to Range 8 West and Range 9 West; then west along the Township line common to Township 4 North and Township 3 North; then north along the range line common to Range 12 West and Range 13 West to the southeast corner of Section 12, Township 5 North and Range 13 West; then west along the south boundaries of Sections 12, 11, 10, 9, 8, and 7, Township 5 North and Range 13 West to the boundary of the Angeles National Forest which is collinear with the range line common to Range 13 West and Range 14 West; then north and west along the Angeles National Forest boundary to the point of intersection with the Township line common to Township 7 North and Township 6 North (point is at the northwest corner of Section 4 in Township 6 North and Range 14 West); then west along the Township line common to Township 7 North and Township 6 North; then north along the range line common to Range 15 West and Range 16 West to the southeast corner of Section 13, Township 7 North and Range 16 West; then along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 7 North and Range 16 West; then north along the range line common to Range 16 West and Range 17 West to the north boundary of the Angeles National Forest (collinear with the Township line common to Township 8 North and Township 7 North); then west and north along the Angeles National Forest boundary to the point of intersection with the south boundary of the Rancho La Liebre Land Grant; then west and north along this land grant boundary to the Los Angeles-Kern County boundary.				
San Bernardino County (part)	.....	Unclassifiable/Attainment	.....	Unclassifiable/Attainment.
That portion of San Bernardino County (with the exception of that portion in Hydrologic Unit Number 18090205) which lies north and east of a line described as follows: Beginning at the San Bernardino-Riverside County boundary and running north along the range line common to Range 3 East and Range 2 East, San Bernardino Base and Meridian; then west along the Township line common to Township 3 North and Township 2 North to the San Bernardino-Los Angeles County boundary; And that portion of San Bernardino County which lies south and west of a line described as follows: latitude 35 degrees, 10 minutes north and longitude 115 degrees, 45 minutes west.				
Trona:				

CALIFORNIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
San Bernardino County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
That portion of San Bernardino County that lies inside Hydrologic Unit Number 18090205.				
Coachella Valley:				
Riverside County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
That portion of Riverside County which lies to the east of a line described as follows: Beginning at the Riverside-San Diego County boundary and running north along the range line common to Range 4 East and Range 3 East, San Bernardino Base and Meridian; then east along the Township line common to Township 8 South and Township 7 South; then north along the range line common to Range 5 East and Range 4 East; then west along the Township line common to Township 6 South and Township 7 South to the southwest corner of Section 34, Township 6 South, Range 4 East; then north along the west boundaries of Sections 34, 27, 22, 15, 10, and 3, Township 6 South, Range 4 East; then west along the Township line common to Township 5 South and Township 6 South; then north along the range line common to Range 4 East and Range 3 East; then west along the south boundaries of Sections 13, 14, 15, 16, 17, and 18, Township 5 South, Range 3 East; then North along the range line common to Range 2 East and Range 3 East; to the Riverside-San Bernardino County line: And that portion of Riverside County which lies to the west of a line described as follows: That segment of the southwestern boundary line of Hydrologic Unit Number 18100100 within Riverside County, further described as follows: Beginning at the Riverside-Imperial County boundary and running north along the range line common to Range 17 East and Range 16 East, San Bernardino Base and Meridian; then northwest along the ridge line of the Chuckwalla Mountains, through Township 8 South, Range 16 East and Township 7 South, Range 16 East, until the Black Butte Mountain, Elevation 4504′; then west and northwest along the ridge line to the southwest corner of Township 5 South, Range 14 East; then north along the range line common to Range 14 East and Range 13 East; then west and northwest along the ridge line to Monument Mountain, elevation 4834′; then southwest and then northwest along the ridge line of the Little San Bernardino Mountains to Quail Mountain, elev. 5814′; then northwest along the ridge line to the Riverside-San Bernardino County line.				
Far Eastern Riverside and San Bernardino Counties:				
San Bernardino County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Riverside County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Imperial County (remainder)		Unclassifiable/Attainment		Unclassifiable Attainment.
San Diego County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwisespecified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 7. Section 81.306 is amended as follows:

■ a. By revising the table heading for ''Colorado—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Colorado—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.306 Colorado.

* * * * *

Colorado—$PM_{2.5}$ (Annual NAAQS)

* * * * *

COLORADO—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Denver-Boulder Area:				
Adams County (part) West of Kiowa Creek		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arapahoe County (part) West of Kiowa Creek		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boulder County (part) Excluding Rocky Mountain National Park.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Broomfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Denver County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 01:				
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Phillips County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sedgwick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yuma County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 02:				
Larimer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Weld County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 03 (remainder of):				
Adams County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arapahoe County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boulder County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clear Creek County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gilpin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 04:				
El Paso County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Park County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Teller County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 05:				
Cheyenne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elbert County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kit Carson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 06:				
Baca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crowley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kiowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otero County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prowers County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 07:				
Huerfano County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Las Animas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pueblo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 08:				
Alamosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Conejos County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Costilla County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mineral County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rio Grande County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saguache County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 09:				
Archuleta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dolores County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Plata County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montezuma County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Juan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 10:				
Delta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gunnison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hinsdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montrose County		Unclassifiable/Attainment		Unclassifiable/Attainment.

COLORADO—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Ouray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Miguel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 11:				
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mesa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moffat County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rio Blanco County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 12:				
Eagle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grand County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pitkin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Routt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Summit County		Unclassifiable/Attainment		Unclassifiable/Attainment.
State AQCR 13:				
Chaffee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fremont County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 8. Section 81.307 is amended as follows:

■ a. By revising the table heading for ''Connecticut—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Connecticut—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.307 Connecticut.

* * * * *

Connecticut—$PM_{2.5}$ (Annual NAAQS)

* * * * *

CONNECTICUT—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Fairfield County		Unclassifiable/Attainment		Nonattainment.
New Haven County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
Hartford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Litchfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Middlesex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
New London County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tolland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Windham County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 9. Section 81.308 is amended as follows:

■ a. By revising the table heading for ''Delaware—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Delaware—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.308 Delaware.

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Delaware—$PM_{2.5}$ (Annual NAAQS)

* * * * *

DELAWARE—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Philadelphia-Wilmington, PA-NJ-DE:				

DELAWARE—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
New Castle County		Unclassifiable/Attainment		Nonattainment.
Southern Delaware Intrastate AQCR:				
Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sussex County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 10. Section 81.309 is amended as follows:

■ a. By revising the table heading for ''District of Columbia—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''District of Columbia—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.302 District of Columbia.

* * * * *

District of Columbia—$PM_{2.5}$ (Annual NAAQS)

* * * * *

DISTRICT OF COLUMBIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 047 National Capital Interstate (DC–MD–VA) (part)				
District of Columbia		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 11. Section 81.310 is amended as follows:

■ a. By revising the table heading for ''Florida—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Florida—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section

§ 81.310 Florida

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Florida—$PM_{2.5}$ (Annual NAAQS)

* * * * *

FLORIDA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Alachua County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bradford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brevard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Broward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charlotte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Citrus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Collier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeSoto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dixie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Duval County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Escambia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Flagler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gadsden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gilchrist County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Glades County		Unclassifiable/Attainment		Unclassifiable/Attainment.

FLORIDA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Gulf County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hendry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hernando County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Highlands County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hillsborough County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Holmes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Indian River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Levy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Liberty County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manatee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miami-Dade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nassau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Okaloosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Okeechobee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osceola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Palm Beach County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pasco County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pinellas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Johns County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Lucie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Santa Rosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sarasota County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seminole County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Suwannee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Volusia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wakulla County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 12. Section 81.311 is amended as follows:

■ a. By revising the table heading for ''Georgia—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Georgia—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.302 Georgia.

* * * * *

Georgia—$PM_{2.5}$ (Annual NAAQS)

* * * * *

GEORGIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Appling County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Atkinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

GEORGIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Bacon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baldwin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Banks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barrow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bartow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ben Hill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Berrien County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bibb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bleckley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brantley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brooks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bryan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bulloch County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butts County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Candler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Catoosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charlton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chatham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chattahoochee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chattooga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clayton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinch County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cobb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coffee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colquitt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coweta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crisp County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dawson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Decatur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeKalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dodge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dooly County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dougherty County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Early County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Echols County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Effingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elbert County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emanuel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Evans County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fannin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Forsyth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gilmer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Glascock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Glynn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gordon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grady County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gwinnett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Habersham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haralson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

GEORGIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Harris County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Heard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Irwin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jeff Davis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jenkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lamar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lanier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Laurens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Liberty County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Long County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lowdes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lumpkin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McDuffie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McIntosh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meriwether County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miller County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mitchell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Murray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muscogee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oconee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oglethorpe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pauling County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Peach County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pickens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pierce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Quitman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rabun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richmond County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Screven County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seminole County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spalding County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stephens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stewart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Talbot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taliaferro County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tattnall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Telfair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Terrell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thomas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tift County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Toombs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Towns County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Treutlen County		Unclassifiable/Attainment		Unclassifiable/Attainment.

GEORGIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Troup County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Turner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Twiggs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Upson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wheeler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
White County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whitfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilcox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilkes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilkinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Worth County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 13. Section 81.312 is amended as follows:

■ a. By revising the table heading for ''Hawaii—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Hawaii—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.312 Hawaii.

* * * * *

Hawaii—$PM_{2.5}$ (Annual NAAQS)

* * * * *

HAWAII—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Hawaii County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Honolulu County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kalawao County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kauai County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maui County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 14. Section 81.313 is amended as follows:

■ a. By revising the table heading for ''Idaho—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Idaho—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.313 Idaho.

* * * * *

Idaho—$PM_{2.5}$ (Annual NAAQS)

* * * * *

IDAHO—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Logan, UT-ID:				
Franklin County (part)		Unclassifiable/Attainment		Nonattainment.

IDAHO—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Begin in the bottom left corner (southwest) of the nonattainment area boundary, southwest corner of the PLSS-Boise Meridian, Township 16 South, Range 37 East, Section 25. The boundary then proceeds north to the northwest corner of Township 15 South, Range 37 East, Section 25; then the boundary proceeds east to the southeast corner of Township 15 South, Range 38 East, Section 19; then north to the Franklin County boundary at the northwest corner of Township 13 South, Range 38 East, Section 20. From this point the boundary proceeds east 3.5 sections along the northern border of the county boundary where it then turns south 2 sections, and then proceeds east 5 more sections, and then north 2 sections more. At this point, the boundary leaves the county boundary and proceeds east at the southeast corner of Township 13 South, Range 39 East, Section 14; then the boundary heads north 2 sections to northwest corner of Township 13 South, Range 39 east, Section 12; then the boundary proceeds east 2 sections to the northeast corner of Township 13 South, Range 40 East, Section 7. The boundary then proceeds south 2 sections to the northwest corner of Township 13 South, Range 40 East, Section 20; the boundary then proceeds east 6 sections to the northeast corner of Township 13 South, Range 41 East, Section 19. The boundary then proceeds south 20 sections to the southeast corner of Township 16 South, Range 41 East, Section 30. Finally, the boundary is completed as it proceeds west 20 sections along the southern Idaho state boundary to the southwest corner of the Township 16 South, Range 37 East, Section 25.				
Rest of State: AQCR 61 Eastern Idaho Intrastate:				
Bannock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bear Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bonneville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caribou County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fremont County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oneida County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Power County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Teton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 62 E Washington-N Idaho Interstate:				
Benewah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kootenai County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Latah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nez Perce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shoshone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 63 Idaho Intrastate:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blaine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boise County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bonner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boundary County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cassia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clearwater County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.

IDAHO—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Elmore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gem County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gooding County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Idaho County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jerome County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lemhi County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Minidoka County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Owyhee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Payette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Twin Falls County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 64 Metropolitan Boise Interstate:				
Ada County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Canyon County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 15. Section 81.314 is amended as follows:

■ a. By revising the table heading for ''Illinois—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Illinois—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.314 Illinois.

* * * * *

Illinois—$PM_{2.5}$ (Annual NAAQS)

* * * * *

ILLINOIS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alexander County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bond County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bureau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Champaign County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Christian County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeKalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
De Witt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DuPage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edgar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edwards County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Effingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gallatin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grundy County		Unclassifiable/Attainment		Unclassifiable/Attainment.

ILLINOIS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iroquois County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jersey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jo Daviess County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kankakee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kendall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Salle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Livingston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McDonough County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McHenry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McLean County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macoupin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Massac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Menard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moultrie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ogle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Peoria County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Piatt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pope County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rock Island County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Clair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sangamon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schuyler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stephenson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tazewell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vermilion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wabash County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
White County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whiteside County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Will County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williamson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winnebago County		Unclassifiable/Attainment		Unclassifiable/Attainment.

ILLINOIS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Woodford County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 16. Section 81.315 is amended as follows:

■ a. By revising the table heading for ''Indiana $PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Indiana $PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.315 Indiana.

* * * * *

Indiana $PM_{2.5}$ (Annual NAAQS)

* * * * *

INDIANA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bartholomew County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blackford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Daviess County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dearborn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Decatur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
De Kalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elkhart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delaware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dubois County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elkhart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fountain County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gibson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hendricks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Huntington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jennings County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kosciusko County		Unclassifiable/Attainment		Unclassifiable/Attainment.
LaGrange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Porte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.

INDIANA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miami County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Noble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ohio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Owen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Parke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Porter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Posey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ripley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rush County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Joseph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spencer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Starke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Steuben County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Switzerland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tippecanoe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tipton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vandenberg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vermillion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vigo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wabash County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warrick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wells County		Unclassifiable/Attainment		Unclassifiable/Attainment.
White County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whitley County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 17. Section 81.316 is amended as follows:

■ a. By revising the table heading for ''Iowa $PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Iowa $PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.316 Iowa.

* * * * *

Iowa—$PM_{2.5}$ (Annual NAAQS)

* * * * *

IOWA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allamakee County		Unclassifiable/Attainment		Unclassifiable/Attainment.

IOWA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Appanoose County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Audubon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Black Hawk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bremer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buchanan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buena Vista County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cedar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cerro Gordo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chickasaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clayton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Davis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Decatur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delaware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Des Moines County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dubuque County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emmet County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fremont County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grundy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guthrie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Humboldt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ida County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Keokuk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kossuth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Linn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Louisa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lucas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lyon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mahaska County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mills County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mitchell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monona County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muscatine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
O'Brien County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osceola County		Unclassifiable/Attainment		Unclassifiable/Attainment.

IOWA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Page County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Palo Alto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Plymouth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pocahontas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pottawattamie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Poweshiek County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ringgold County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sioux County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Story County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tama County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Buren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wapello County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winnebago County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winneshiek County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woodbury County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Worth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wright County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 18. Section 81.317 is amended as follows:

■ a. By revising the table heading for ''Kansas $PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Kansas $PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.317 Kansas.

* * * * *

Kansas—$PM_{2.5}$ (Annual NAAQS)

* * * * *

KANSAS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Allen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Anderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Atchison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barber County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bourbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chase County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chautauqua County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cheyenne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cloud County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coffey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Comanche County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cowley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Decatur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

KANSAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Doniphan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edwards County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ellis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ellsworth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Finney County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Geary County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gove County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Graham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greeley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greenwood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harvey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haskell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hodgeman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jewell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kearny County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kingman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kiowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Labette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leavenworth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Linn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lyon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McPherson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miami County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mitchell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morris County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nemaha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Neosho County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ness County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Norton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osborne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ottawa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pawnee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Phillips County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pottawatomie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pratt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rawlins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Reno County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Republic County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rice County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Riley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rooks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rush County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Russell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sedgwick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shawnee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheridan County		Unclassifiable/Attainment		Unclassifiable/Attainment.

KANSAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Sherman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Smith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stafford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stanton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stevens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thomas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trego County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wabaunsee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wallace County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wichita County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woodson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wyandotte County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 19. Section 81.318 is amended as follows:

■ a. By revising the table heading for ''Kentucky—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Kentucky—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.318 Kentucky.

* * * * *

Kentucky—$PM_{2.5}$ (Annual NAAQS)

* * * * *

KENTUCKY—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Anderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ballard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bath County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bourbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boyle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bracken County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Breathitt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Breckinridge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bullitt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caldwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calloway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Campbell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carlisle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Casey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Christian County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crittenden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Daviess County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edmonson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elliott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Estill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.

KENTUCKY—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Fleming County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gallatin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garrard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Graves County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grayson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Green County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greenup County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harlan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hickman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hopkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jessamine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kenton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Larue County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Laurel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leslie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Letcher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Livingston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lyon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCracken County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCreary County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McLean County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Magoffin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Menifee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Metcalfe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muhlenberg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nelson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nicholas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ohio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oldham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Owen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Owsley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pendleton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Powell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Robertson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockcastle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rowan County		Unclassifiable/Attainment		Unclassifiable/Attainment.

KENTUCKY—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Russell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Simpson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spencer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Todd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trigg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trimble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whitley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wolfe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woodford County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 20. Section 81.319 is amended as follows:

■ a. By revising the table heading for ''Louisiana—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Louisiana—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.319 Louisiana.

* * * * *

Louisiana—$PM_{2.5}$ (Annual NAAQS)

* * * * *

LOUISIANA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 019 Monroe-El Dorado Interstate:				
Caldwell Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Catahoula Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Concordia Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
East Carroll Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Salle Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morehouse Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ouachita Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tensas Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
West Carroll Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 022 Shreveport-Texarkana-Tyler Interstate:				
Bienville Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bossier Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caddo Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Claiborne Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
De Soto Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Natchitoches Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Red River Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sabine Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winn Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 106 S. Louisiana-S.E. Texas Interstate:				
Acadia Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allen Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ascension Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Assumption Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Avoyelles Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.

LOUISIANA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Beauregard Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calcasieu Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cameron Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
East Baton Rouge Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
East Feliciana Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Evangeline Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iberia Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iberville Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson Davis Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafourche Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Livingston Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orleans Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Plaquemines Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pointe Coupee Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rapides Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Bernard Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Charles Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Helena Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. James Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. John the Baptist Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Landry Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Martin Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Tammany Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tangipahoa Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Terrebonne Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vermilion Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vernon Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
West Baton Rouge Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.
West Feliciana Parish		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 21. Section 81.320 is amended as follows:

■ a. By revising the table heading for ''Maine—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Maine—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.320 Maine.

* * * * *

Maine—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MAINE—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Androscoggin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aroostook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kennebec County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oxford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Penobscot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Piscataquis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sagadahoc County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Somerset County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waldo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.

MAINE—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
York County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 22. Section 81.321 is amended as follows:

■ a. By revising the table heading for ''Maryland—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Maryland—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.321 Maryland.

* * * * *

Maryland—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MARYLAND—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 047 National Capital Interstate (DC–MD–VA) (part):				
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prince George's County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Metropolitan Baltimore Intrastate AQCR:				
Anne Arundel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baltimore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
City of Baltimore		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 112 Central Maryland Intrastate:				
Frederick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 113 Cumberland-Keyser Interstate:				
Allegany County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garrett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 114 Eastern Shore Intrastate:				
Caroline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cecil County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dorchester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Queen Anne's County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Somerset County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Talbot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wicomico County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Worcester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 116 Southern Maryland Intrastate:				
Calvert County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Mary's County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 23. Section 81.322 is amended as follows:

■ a. By revising the table heading for ''Massachusetts—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Massachusetts—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.322 Massachusetts.

* * * * *

Massachusetts—$PM_{2.5}$ (24-Hour NAAQS)

MASSACHUSETTS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Barnstable County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Berkshire County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bristol County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dukes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Essex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hampden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hampshire County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Middlesex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nantucket County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Norfolk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Plymouth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Suffolk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Worcester County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 24. Section 81.323 is amended as follows:

■ a. By revising the table heading for ''Michigan—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Michigan—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.323 Michigan.

* * * * *

Michigan—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MICHIGAN—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Detroit-Ann Arbor, MI:				
Livingston County		Unclassifiable/Attainment		Nonattainment.
Macomb County		Unclassifiable/Attainment		Nonattainment.
Monroe County		Unclassifiable/Attainment		Nonattainment.
Oakland County		Unclassifiable/Attainment		Nonattainment.
St. Clair County		Unclassifiable/Attainment		Nonattainment.
Washtenaw County		Unclassifiable/Attainment		Nonattainment.
Wayne County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
Alcona County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alger County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allegan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alpena County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Antrim County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arenac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baraga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benzie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Berrien County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Branch County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charlevoix County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cheboygan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chippewa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clare County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eaton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emmet County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Genesee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gladwin County		Unclassifiable/Attainment		Unclassifiable/Attainment.

MICHIGAN—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Gogebic County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grand Traverse County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gratiot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hillsdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houghton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Huron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ionia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iosco County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Isabella County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kalamazoo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kalkaska County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Keweenaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lapeer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leelanau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lenawee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Luce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mackinac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manistee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marquette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mecosta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Menominee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Midland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Missaukee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montcalm County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montmorency County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muskegon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newaygo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oceana County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ogemaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ontonagon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osceola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oscoda County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otsego County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ottawa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Presque Isle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roscommon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saginaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Joseph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sanilac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schoolcraft County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shiawassee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tuscola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Buren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wexford County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 25. Section 81.324 is amended as follows:

■ a. By revising the table heading for ''Minnesota—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Minnesota—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.324 Minnesota.

* * * * *

Minnesota—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MINNESOTA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Aitkin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Anoka County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Becker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beltrami County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Big Stone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blue Earth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carlton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carver County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chippewa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chisago County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clearwater County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cottonwood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crow Wing County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dakota County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dodge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Faribault County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fillmore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Freeborn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Goodhue County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hennepin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hubbard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Isanti County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Itasca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kanabec County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kandiyohi County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kittson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Koochiching County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lac qui Parle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake of the Woods County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Le Sueur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lyon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McLeod County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mahnomen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meeker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mille Lacs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mower County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Murray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nicollet County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nobles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Norman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Olmsted County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otter Tail County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pennington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pipestone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pope County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ramsey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Red Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Redwood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Renville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rice County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roseau County		Unclassifiable/Attainment		Unclassifiable/Attainment.

MINNESOTA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
St. Louis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sherburne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sibley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stearns County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Steele County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stevens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Swift County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Todd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Traverse County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wabasha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wadena County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waseca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Watonwan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilkin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winona County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wright County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yellow Medicine County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 26. Section 81.325 is amended as follows:

■ a. By revising the table heading for ''Mississippi—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Mississippi—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.325 Mississippi.

* * * * *

Mississippi—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MISSISSIPPI—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alcorn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Amite County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Attala County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bolivar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chickasaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Choctaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Claiborne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coahoma County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Copiah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Covington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeSoto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Forrest County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
George County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grenada County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hinds County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Holmes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Humphreys County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Issaquena County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Itawamba County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

MISSISSIPPI—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson Davis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kemper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lamar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lauderdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leflore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lowndes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Neshoba County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Noxubee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oktibbeha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Panola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pearl River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pontotoc County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prentiss County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Quitman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rankin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sharkey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Simpson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Smith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sunflower County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tallahatchie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tate County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tippah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tishomingo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tunica County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walthall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilkinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yalobusha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yazoo County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 27. Section 81.326 is amended as follows:

■ a. By revising the table heading for ''Missouri—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Missouri—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.326 Missouri.

* * * * *

Missouri—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MISSOURI—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Andrew County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Atchison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Audrain County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bates County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bollinger County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buchanan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caldwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Callaway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cape Girardeau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cedar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chariton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Christian County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cole County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cooper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Daviess County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeKalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dunklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gasconade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gentry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grundy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hickory County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Holt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Laclede County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Linn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Livingston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McDonald County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maries County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miller County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mississippi County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moniteau County		Unclassifiable/Attainment		Unclassifiable/Attainment.

MISSOURI—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
New Madrid County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nodaway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oregon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ozark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pemiscot County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pettis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Phelps County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Platte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ralls County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Reynolds County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ripley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Charles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Clair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Genevieve County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Francois County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Louis City		Unclassifiable/Attainment		Unclassifiable/Attainment.
St Louis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schuyler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scotland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shannon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stoddard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taney County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Texas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vernon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Worth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wright County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 28. Section 81.327 is amended as follows:

■ a. By revising the table heading for ''Montana—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Montana—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.327 Montana.

* * * * *

Montana—$PM_{2.5}$ (Annual NAAQS)

* * * * *

MONTANA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Ravalli County		Unclassifiable/Attainment		Unclassifiable.
Rest of State:				

MONTANA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Beaverhead County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Big Horn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blaine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Broadwater County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cascade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chouteau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Daniels County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dawson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Deer Lodge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fallon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fergus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Flathead County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gallatin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Glacier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Golden Valley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Granite County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Judith Basin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis and Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Liberty County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meagher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mineral County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Missoula County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Musselshell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Park County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Petroleum County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Phillips County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pondera County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Powder River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Powell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prairie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roosevelt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rosebud County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sanders County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheridan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Silver Bow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stillwater County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sweet Grass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Teton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Toole County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Treasure County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wheatland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wibaux County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yellowstone County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 29. Section 81.328 is amended as follows:

■ a. By revising the table heading for ''Nebraska—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Nebraska—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.328 Nebraska.

* * * * *

Nebraska—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEBRASKA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Antelope County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arthur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Banner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blaine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Box Butte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buffalo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cedar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chase County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cheyenne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colfax County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cuming County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dakota County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dawes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dawson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Deuel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dixon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dodge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dundy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fillmore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Frontier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Furnas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gosper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greeley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harlan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hayes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hitchcock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Holt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hooker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kearney County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Keith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Keya Paha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kimball County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lancaster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Loup County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McPherson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Merrick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morrill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nance County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nemaha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nuckolls County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otoe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pawnee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.

NEBRASKA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Phelps County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pierce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Platte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Red Willow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richardson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sarpy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saunders County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scotts Bluff County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheridan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sherman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sioux County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stanton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thayer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thomas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thurston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wheeler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
York County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 30. Section 81.329 is amended as follows:

■ a. By revising the table heading for ''Nevada—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Nevada—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.329 Nevada.

* * * * *

Nevada—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEVADA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide [3]		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.
[3] Statewide refers to hydrographic areas as shown on the State of Nevada Division of Water Resources' map titled ''Water Resources and Inter-basin Flows'' (September 1971), as revised to include a division of Carson Desert (area 101) into two areas, a smaller area 101 and area 101A, and a division of Boulder Flat (area 61) into an Upper Unit 61 and a Lower Unit 61. See also 67 FR 12474 (March 19, 2002).

■ 31. Section 81.330 is amended as follows:

■ a. By revising the table heading for ''New Hampshire—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''New Hampshire—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.330 New Hampshire.

* * * * *

New Hampshire—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEW HAMPSHIRE—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Belknap County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cheshire County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coos County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grafton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hillsborough County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Merrimack County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Strafford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 32. Section 81.331 is amended as follows:

■ a. By revising the table heading for ''New Jersey—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''New Jersey—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.331 New Jersey.

* * * * *

New Jersey—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEW JERSEY—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
New York-N.New Jersey-Long Island, NY-NJ-CT:				
Bergen County		Unclassifiable/Attainment		Nonattainment.
Essex County		Unclassifiable/Attainment		Nonattainment.
Hudson County		Unclassifiable/Attainment		Nonattainment.
Mercer County		Unclassifiable/Attainment		Nonattainment.
Middlesex County		Unclassifiable/Attainment		Nonattainment.
Monmouth County		Unclassifiable/Attainment		Nonattainment.
Morris County		Unclassifiable/Attainment		Nonattainment.
Passaic County		Unclassifiable/Attainment		Nonattainment.
Somerset County		Unclassifiable/Attainment		Nonattainment.
Union County		Unclassifiable/Attainment		Nonattainment.
Philadelphia-Wilmington, PA-NJ-DE:				
Burlington County		Unclassifiable/Attainment		Nonattainment.
Camden County		Unclassifiable/Attainment		Nonattainment.
Gloucester County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Hunterdon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sussex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Atlantic City, NJ:				
Atlantic County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cape May County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ocean County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Salem County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 33. Section 81.332 is amended as follows:

■ a. By revising the table heading for ''New Mexico—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''New Mexico—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.332 New Mexico.

* * * * *

New Mexico—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEW MEXICO—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 222 New Mexico-Southern Border Intrastate:				
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hidalgo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Luna County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 224 Four Corners Interstate (see 40 CFR 81.121):				
McKinley County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Río Arriba County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sandoval County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Juan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valencia County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 152 Albuquerque-Mid Rio Grande Intrastate:				
Bernalillo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sandoval County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valencia County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 153 El Paso-Las Cruces-Alamogordo:				
Doña Ana County (part) (Sunland Park Area) The area bounded by the New Mexico-Texas State line on the east, New Mexico-Mexico international line on the south, the range 3E-Range 2E line on the west, and the N3200 latitude line on the north.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Doña Ana County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otero County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sierra County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 154 Northeastern Plains Intrastate:				
Colfax County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guadalupe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harding County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mora County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Miguel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Torrance County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 155 Pecos-Permian Basin Intrastate:				
Chaves County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Curry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
De Baca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eddy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lea County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Quay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roosevelt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 156 SW Mountains-Augustine Plains:				
Catron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cibola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McKinley County (part) see 40 CFR 81.241		Unclassifiable/Attainment		Unclassifiable/Attainment.
Socorro County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Valencia County (part) see 40 CFR 81.241		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 157 Upper Rio Grande Valley Intrastate:				
Los Alamos County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Río Arriba County (part) see 40 CFR 81.239		Unclassifiable/Attainment		Unclassifiable/Attainment.
Santa Fe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taos County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 34. Section 81.333 is amended as follows:

■ a. By revising the table heading for ''New York—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''New York—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.333 New York.

* * * * *

New York—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NEW YORK—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
New York-N. New Jersey-Long Island, NY-NJ-CT:				
Bronx County		Unclassifiable/Attainment		Nonattainment.
Kings County		Unclassifiable/Attainment		Nonattainment.
Nassau County		Unclassifiable/Attainment		Nonattainment.
New York County		Unclassifiable/Attainment		Nonattainment.
Orange County		Unclassifiable/Attainment		Nonattainment.
Queens County		Unclassifiable/Attainment		Nonattainment.
Richmond County		Unclassifiable/Attainment		Nonattainment.
Rockland County		Unclassifiable/Attainment		Nonattainment.
Suffolk County		Unclassifiable/Attainment		Nonattainment.
Westchester County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
AQCR 158 Central New York Intrastate (remainder of):				
Cortland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Herkimer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oneida County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 159 Champlain Valley Interstate (remainder of):				
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 160 Finger Lake Intrastate:				
Seneca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wyoming County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yates County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 161 Hudson Valley Intrastate (remainder of):				
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ulster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 163 Southern Tier East Intrastate:				
Broome County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chenango County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delaware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Otsego County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tioga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 164 Southern Tier West Intrastate:				
Allegany County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cattaraugus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chemung County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schuyler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Steuben County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tompkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Albany-Schenectady-Troy, NY:				
Albany County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rensselaer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saratoga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schenectady County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schoharie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buffalo-Niagara Falls, NY:				
Erie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Niagara County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Essex County, NY:				
Essex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jamestown, NY:				
Chautauqua County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County, NY:				
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Poughkeepsie, NY:				
Dutchess County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rochester, NY:				

NEW YORK—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Genesee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Livingston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ontario County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orleans County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Syracuse, NY:				
Cayuga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Onondaga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oswego County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 35. Section 81.334 is amended as follows:

■ a. By revising the table heading for ''North Carolina—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''North Carolina—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.334 North Carolina.

* * * * *

North Carolina—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NORTH CAROLINA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Alamance County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alexander County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alleghany County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Anson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ashe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Avery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beaufort County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bertie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bladen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brunswick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buncombe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cabarrus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caldwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carteret County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caswell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Catawba County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chatham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chowan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cleveland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Craven County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Currituck County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dare County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Davidson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Davie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Duplin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Durham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edgecombe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Forsyth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gaston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gates County		Unclassifiable/Attainment		Unclassifiable/Attainment.

NORTH CAROLINA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Graham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Granville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guilford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Halifax County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harnett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haywood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hertford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hoke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hyde County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iredell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lenoir County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McDowell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mecklenburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mitchell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nash County		Unclassifiable/Attainment		Unclassifiable/Attainment.
New Hanover County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northampton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Onslow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pamlico County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pasquotank County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pender County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perquimans County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Person County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pitt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richmond County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Robeson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rowan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rutherford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sampson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scotland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stanly County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stokes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Surry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Swain County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Transylvania County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tyrrell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vance County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Watauga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilkes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yadkin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yancey County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 36. Section 81.335 is amended as follows:

■ a. By revising the table heading for ''North Dakota—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''North Dakota—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.335 North Dakota.

* * * * *

North Dakota—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NORTH DAKOTA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 130 Metropolitan Fargo-Moorhead Interstate:				
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rest of State, AQCR 172:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barnes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Billings County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bottineau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bowman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burleigh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cavalier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Divide County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dunn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eddy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emmons County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Foster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Golden Valley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grand Forks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Griggs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hettinger County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kidder County		Unclassifiable/Attainment		Unclassifiable/Attainment.
LaMoure County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McHenry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McIntosh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McKenzie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McLean County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mountrail County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nelson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oliver County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pembina County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pierce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ramsey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ransom County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Renville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rolette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sargent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheridan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sioux County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Slope County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Steele County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stutsman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Towner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Traill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walsh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wells County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williams County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 37. Section 81.336 is amended as follows:

■ a. By revising the table heading for ''Ohio—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Ohio—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.336 Ohio.

* * * * *

Ohio—$PM_{2.5}$ (Annual NAAQS)

* * * * *

OHIO—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Canton-Massillon, OH:				
Stark County		Unclassifiable/Attainment		Nonattainment.
Cleveland-Akron-Lorain, OH:				
Cuyahoga County		Unclassifiable/Attainment		Nonattainment.
Lake County		Unclassifiable/Attainment		Nonattainment.
Lorain County		Unclassifiable/Attainment		Nonattainment.
Medina County		Unclassifiable/Attainment		Nonattainment.
Portage County		Unclassifiable/Attainment		Nonattainment.
Summit County		Unclassifiable/Attainment		Nonattainment.
Steubenville-Weirton, OH-WV:				
Jefferson County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ashland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ashtabula County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Athens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Auglaize County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Belmont County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Champaign County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clermont County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbiana County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coshocton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Darke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Defiance County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delaware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Erie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fairfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gallia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Geauga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guernsey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Highland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hocking County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Holmes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Huron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Licking County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lucas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mahoning County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meigs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miami County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.

OHIO—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morrow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muskingum County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Noble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ottawa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Paulding County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pickaway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Preble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ross County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sandusky County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scioto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seneca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trumbull County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tuscarawas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Wert County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wyandot County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 38. Section 81.337 is amended as follows:

■ a. By revising the table heading for ''Oklahoma—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Oklahoma—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.337 Oklahoma.

* * * * *

Oklahoma—$PM_{2.5}$ (Annual NAAQS)

* * * * *

OKLAHOMA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 017 Metropolitan Fort Smith Interstate:				
Adair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Le Flore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sequoyah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 022 Shreveport-Texarkana-Tyler Intrastate:				
McCurtain County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 184 Central Oklahoma Intrastate:				
Canadian County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cleveland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grady County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kingfisher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McClain County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oklahoma County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pottawatomie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 185 North Central Oklahoma Intrastate:				
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.

OKLAHOMA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Kay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Noble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Payne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 186 Northeastern Oklahoma Intrastate:				
Craig County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Creek County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delaware County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mayes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Muskogee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nowata County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Okmulgee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Osage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ottawa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pawnee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rogers County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tulsa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wagoner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 187 Northwestern Oklahoma Intrastate:				
Alfalfa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beaver County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blaine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cimarron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dewey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ellis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Major County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roger Mills County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Texas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woods County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Woodward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 188 Southeastern Oklahoma Intrastate:				
Atoka County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bryan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Choctaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coal County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garvin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haskell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hughes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Latimer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Love County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McIntosh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Murray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Okfuskee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pittsburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pontotoc County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pushmataha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Seminole County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 189 Southwestern Oklahoma Intrastate:				
Beckham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caddo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Comanche County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cotton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harmon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kiowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stephens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tillman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washita County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 39. Section 81.338 is amended as follows:

■ a. By revising the table heading for ''Oregon—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Oregon—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.338 Oregon.

* * * * *

Oregon—$PM_{2.5}$ (Annual NAAQS)

* * * * *

OREGON—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Klamath Falls, OR:				
Klamath County (part)		Unclassifiable/Attainment		Nonattainment.
Townships and ranges defined by T37S R9E Sections 31–32. T38S R8E Sections 1–5, 8–16, 22–26, 35–36. T38S R9E Sections 5–8, 14–15, 17–36. T39S R8E Sections 1–2, 11–13, 24. T39S R9E Sections 1–27. T39S R10E Sections 3–10, 15–20, 29–30.				
Oakridge, OR:				
Lane County (part)		Unclassifiable/Attainment		Nonattainment.
Boundary is defined as a line from Township 21 South, Range 2 East, Section 11 (northwest corner) east to Township 21 South, Range 3 East, Section 11 (northeast corner), south to Township 21 South, Range 3 East, Section 23 (southeast corner), west to Township 21 South, Range 2 East, Section 23 (southwest corner) connecting back to Township 21 South, Range 2 East, Section 11 (northwest corner).				
Rest of State:				
Portland-Vancouver AQMA: (Air Quality Maintenance Area)				
Clackamas County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Multnomah County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Salem Area: (Salem Area Transportation Study):				
Marion County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 190 Central Oregon Intrastate:				
Crook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Deschutes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hood River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Klamath County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sherman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wasco County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 191 Eastern Oregon Intrastate:				
Baker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gilliam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harney County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Malheur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morrow County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Umatilla County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wallowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wheeler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 192 Northwest Oregon Intrastate:				
Clatsop County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tillamook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 193 Portland Interstate (part):				
Lane County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eugene Springfield Air Quality Maintenance AQCR 193 Portland Interstate:				
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clackamas County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lane County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.

OREGON—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Linn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The area outside the Salem Area Transportation Study				
Multnomah County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The area outside the Salem Area Transportation Study				
Washington County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yamhill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 194 Southwest Oregon Intrastate (part):				
Jackson County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Medford-Ashland Air Quality Maintenance Area AQCR 194 Southwest Oregon Intrastate: (remainder of):				
Coos County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Curry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Josephine County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 40. Section 81.339 is amended as follows:

■ a. By revising the table heading for ''Pennsylvania—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Pennsylvania—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.339 Pennsylvania.

* * * * *

Pennsylvania—$PM_{2.5}$ (Annual NAAQS)

* * * * *

PENNSYLVANIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Allentown, PA:				
Lehigh County		Unclassifiable/Attainment		Nonattainment.
Northampton County		Unclassifiable/Attainment		Nonattainment.
Harrisburg-Lebanon-Carlisle-York, PA:				
Cumberland County		Unclassifiable/Attainment		Nonattainment.
Dauphin County		Unclassifiable/Attainment		Nonattainment.
Lebanon County		Unclassifiable/Attainment		Nonattainment.
York County		Unclassifiable/Attainment		Nonattainment.
Johnstown, PA:				
Cambria County		Unclassifiable/Attainment		Nonattainment.
Indiana County (part)		Unclassifiable/Attainment		Nonattainment.
Townships of West Wheatfield, Center, East Wheatfield, and Armagh Borough and Homer City Borough.				
Lancaster, PA:				
Lancaster County		Unclassifiable/Attainment		Nonattainment.
Liberty-Clairton, PA:				
Allegheny County (part)		Unclassifiable/Attainment		Nonattainment.
Lincoln Borough, Clairton City, Glassport Borough, Liberty Borough, Port Vue Borough.				
Philadelphia-Wilmington, PA-NJ-DE:				
Bucks County		Unclassifiable/Attainment		Nonattainment.
Chester County		Unclassifiable/Attainment		Nonattainment.
Delaware County		Unclassifiable/Attainment		Nonattainment.
Montgomery County		Unclassifiable/Attainment		Nonattainment.
Philadelphia County		Unclassifiable/Attainment		Nonattainment.
Pittsburgh-Beaver Valley, PA:				
Allegheny County (remainder)		Unclassifiable/Attainment		Nonattainment.

PENNSYLVANIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Armstrong County (part) Elderton Borough and Plumcreek and Washington Townships.		Unclassifiable/Attainment		Nonattainment.
Beaver County		Unclassifiable/Attainment		Nonattainment.
Butler County		Unclassifiable/Attainment		Nonattainment.
Greene County (part) Monongahela Township.		Unclassifiable/Attainment		Nonattainment.
Lawrence County (part) Township of Taylor south of New Castle City.		Unclassifiable/Attainment		Nonattainment.
Washington County		Unclassifiable/Attainment		Nonattainment.
Westmoreland County		Unclassifiable/Attainment		Nonattainment.
Youngstown-Warren-Sharon, OH-PA:				
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rest of State:				
AQCR 151 Northeast Pennsylvania-Upper Delaware Valley Interstate:				
Berks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bradford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lackawanna County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Luzerne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pike County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schuylkill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Susquehanna County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tioga County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wyoming County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 178 Northwest Pennsylvania-Youngstown Interstate:				
Cameron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clearfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Elk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Erie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Forest County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
McKean County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Potter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Venango County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 195 Central Pennsylvania Intrastate:				
Bedford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blair County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Centre County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clinton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fulton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Huntingdon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juniata County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lycoming County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mifflin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montour County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Snyder County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Somerset County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 196 South Central Pennsylvania Intrastate:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 197 Southwest Pennsylvania Intrastate:				
Armstrong County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.

PENNSYLVANIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Indiana County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 41. Section 81.340 is amended as follows:

■ a. By revising the table heading for ''Rhode Island—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Rhode Island—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.340 Rhode Island.

* * * * *

Rhode Island—$PM_{2.5}$ (Annual NAAQS)

* * * * *

RHODE ISLAND—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Bristol County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newport County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Providence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 42. Section 81.341 is amended as follows:

■ a. By revising the table heading for ''South Carolina—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''South Carolina—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.341 South Carolina.

* * * * *

South Carolina—$PM_{2.5}$ (Annual NAAQS)

* * * * *

■ 42. Section 81.341 is amended as follows:

■ a. By revising the table heading for ''South Carolina

SOUTH CAROLINA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Abbeville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aiken County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Allendale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Anderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bamberg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barnwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beaufort County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Berkeley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charleston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chesterfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarendon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colleton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Darlington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dillon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dorchester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edgefield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fairfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.

SOUTH CAROLINA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Florence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Georgetown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greenwood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greenville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hampton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Horry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kershaw County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lancaster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Laurens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lexington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCormick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marlboro County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newberry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oconee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orangeburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pickens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saluda County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spartanburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williamsburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
York County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 43. Section 81.342 is amended as follows:

■ a. By revising the table heading for ''South Dakota—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''South Dakota—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.342 South Dakota.

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South Dakota—$PM_{2.5}$ (Annual NAAQS)

* * * * *

SOUTH DAKOTA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Aurora County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beadle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bennett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bon Homme County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brookings County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brule County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buffalo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Butte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Campbell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charles Mix County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Codington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Croson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Custer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Davison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Day County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Deuel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dewey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edmunds County		Unclassifiable/Attainment		Unclassifiable/Attainment.

SOUTH DAKOTA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Fall River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Faulk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gregory County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haakon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamlin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hand County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hanson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harding County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hughes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hutchinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hyde County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jerauld County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kingsbury County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lyman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McPherson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mellette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Miner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Minnehaha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moody County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pennington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Potter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roberts County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sanborn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shannon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spink County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stanley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sully County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Todd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tripp County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Turner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walworth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yankton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ziebach County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 44. Section 81.343 is amended as follows:

■ a. By revising the table heading for ''Tennessee—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Tennessee—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.343 Tennessee.

* * * * *

Tennessee—$PM_{2.5}$ (Annual NAAQS)

* * * * *

TENNESSEE—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Knoxville, TN:				
Anderson County		Unclassifiable/Attainment		Nonattainment.
Blount County		Unclassifiable/Attainment		Nonattainment.
Knox County		Unclassifiable/Attainment		Nonattainment.
Loudon County		Unclassifiable/Attainment		Nonattainment.

TENNESSEE—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Roane County (part)		Unclassifiable/Attainment		Nonattainment.
The area described by U.S. Census 2000 block group identifier 47–145–0307–2.				
Rest of State:				
Bedford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bledsoe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bradley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Campbell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cannon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cheatham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Claiborne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cocke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coffee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crockett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Davidson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Decatur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeKalb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dyer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fentress County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gibson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Giles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grainger County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grundy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamblen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hancock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardeman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hawkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haywood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hickman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Humphreys County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lauderdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lawrence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McMinn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McNairy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Macon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maury County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Meigs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Obion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Overton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Perry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pickett County		Unclassifiable/Attainment		Unclassifiable/Attainment.

TENNESSEE—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Putnam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rhea County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roane County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Robertson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rutherford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sequatchie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sevier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Smith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stewart County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sullivan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sumner County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tipton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trousdale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Unicoi County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Union County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Buren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Weakley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
White County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williamson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 45. Section 81.344 is amended as follows:

■ a. By revising the table heading for ''Texas—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Texas—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.344 Texas.

* * * * *

■ Texas—$PM_{2.5}$ (Annual NAAQS)

* * * * *

TEXAS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 022 Shreveport-Texarkana-Tyler Interstate:				
Anderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bowie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camp County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cass County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cherokee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Delta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gregg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hopkins County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lamar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morris County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Panola County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rains County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Red River County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rusk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Smith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Titus County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Upshur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Van Zandt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wood County		Unclassifiable/Attainment		Unclassifiable/Attainment.

TEXAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 106 S Louisiana-SE Texas Interstate (remainder of):				
Angelina County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jasper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nacogdoches County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sabine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Augustine County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Jacinto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shelby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trinity County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tyler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 153 El Paso-Las Cruces-Alamogordo Interstate:				
Brewster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Culberson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
El Paso County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hudspeth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jeff Davis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Presidio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 210 Abilene-Wichita Falls Intrastate:				
Archer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Baylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Callahan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coleman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Comanche County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cottle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eastland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fisher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Foard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hardeman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Haskell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jack County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jones County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Knox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mitchell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montague County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nolan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Runnels County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scurry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shackelford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stephens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stonewall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Throckmorton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wichita County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilbarger County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Young County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 211 Amarillo-Lubbock Intrastate:				
Armstrong County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bailey County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Briscoe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Castro County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Childress County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cochran County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Collingsworth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crosby County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Deaf Smith County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Donley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garza County		Unclassifiable/Attainment		Unclassifiable/Attainment.

TEXAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Gray County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hale County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hansford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hartley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hemphill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hockley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hutchinson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
King County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lamb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lipscomb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lubbock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lynn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moore County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Motley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ochiltree County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oldham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Parmer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Potter County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roberts County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sherman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Swisher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Terry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wheeler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yoakum County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 212 Austin-Waco Intrastate:				
Bastrop County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Blanco County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bosque County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brazoe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burleson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Burnet County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caldwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coryell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Falls County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Freestone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grimes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hamilton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hays County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hill County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lampasas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Leon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Limestone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Llano County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McLennan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Milam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mills County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Robertson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Saba County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Travis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williamson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 213 Brownsville-Laredo Intrastate:				
Cameron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hidalgo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jim Hogg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Starr County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webb County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Willacy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Zapata County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 214 Corpus Christi-Victoria Intrastate (part):				
Nueces County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 214 Corpus Christi-Victoria Intrastate (remainder of):				

TEXAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Aransas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brooks County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
DeWitt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Duval County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Goliad County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gonzales County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jim Wells County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kenedy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kleberg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lavaca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Live Oak County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McMullen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Refugio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Patricio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 215 Metro Dallas-Fort Worth Intrastate (remainder of):				
Cooke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Erath County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fannin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grayson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henderson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hunt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Navarro County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Palo Pinto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Somervell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wise County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 216 Metro Houston-Galveston Intrastate (remainder of):				
Austin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colorado County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Matagorda County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wharton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 217 Metro San Antonio Intrastate (remainder of):				
Atascosa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bandera County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dimmit County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Edwards County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Frio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gillespie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Karnes County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kendall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kerr County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kinney County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Salle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maverick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Medina County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Real County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Uvalde County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Val Verde County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wilson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Zavala County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 218 Midland-Odessa-San Angelo Intrastate (part):				
Ector County		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 218 Midland-Odessa-San Angelo Intrastate (remainder of):				
Andrews County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Borden County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Concho County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crockett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dawson County		Unclassifiable/Attainment		Unclassifiable/Attainment.

TEXAS—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Gaines County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Glasscock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Howard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Irion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kimble County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Loving County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McCulloch County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Menard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Midland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pecos County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Reagan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Reeves County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Schleicher County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sterling County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sutton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Terrell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tom Green County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Upton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winkler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Beaumont/Port Arthur, TX:				
Hardin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas-Fort Worth, TX:				
Collin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dallas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Denton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ellis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kaufman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Parker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockwell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tarrant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Houston-Galveston-Brazoria, TX:				
Brazoria County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chambers County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fort Bend County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Galveston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harris County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Liberty County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waller County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Antonio, TX:				
Bexar County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Comal County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guadalupe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Victoria Area:				
Victoria County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 46. Section 81.345 is amended as follows:

■ a. By revising the table heading for ''Utah—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Utah—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.345 Utah.

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Utah—$PM_{2.5}$ (Annual NAAQS)

* * * * *

UTAH—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Logan, UT-ID:				
Cache County (part)		Unclassifiable/Attainment		Nonattainment.
All portions of Cache County west of and including any portion of the following townships located within Utah: Township 15 North Range 1 East; Township 14 North Range 1 East; Township 13 North Range 1 East; Township 12 North Range 1 East; Township 11 North Range 1 East; Township 10 North Range 1 East; Township 9 North Range 1 East.				
Provo, UT:				
Utah County (part)		Unclassifiable/Attainment		Nonattainment.
The area of Utah County that lies west of the Wasatch Mountain Range (and this includes the Cities of Provo and Orem) with an eastern boundary for Utah County to be defined as the following Townships: Township 3 South Range 1 East; Township 4 South Range 2 East; Township 5 South Range 3 East; Township 6 South Range 3 East; Township 7 South Range 3 East; Township 8 South Range 3 East; Township 9 South Range 3 East; Township 10 South Range 2 East.				
Salt Lake City, UT:				
Box Elder County (part)		Unclassifiable/Attainment		Nonattainment.
The following Townships or portions thereof as noted (including Brigham City): Township 7 North Range 2 West; Township 8 North Range 2 West; Township 9 North Range 2 West; Township 10 North Range 2 West; Township 11 North Range 2 West; Township 12 North Range 2 West; Township 13 North Range 2 West; Township 9 North Range 3 West; Township 10 North Range 3 West; Township 11 North Range 3 West; Township 12 North Range 3 West; Township 13 North Range 3 West; Township 13 North Range 4 West; Township 12 North Range 4 West; Township 11 North Range 4 West; Township 10 North Range 4 West; Township 9 North Range 4 West; Township 13 North Range 5 West; Township 12 North Range 5 West; Township 11 North Range 5 West; Township 10 North Range 5 West; Township 9 North Range 5 West; Township 13 North Range 6 West; Township 12 North Range 6 West; Township 11 North Range 6 West; Township 10 North Range 6 West; Township 9 North Range 6 West; Township 7 North Range 1 West (portion located in Box Elder County); Township 8 North Range 1 West (portion located in Box Elder County); Township 9 North Range 1 West (portion located in Box Elder County).				
Davis County		Unclassifiable/Attainment		Nonattainment.
Salt Lake County		Unclassifiable/Attainment		Nonattainment.
Tooele County (part)		Unclassifiable/Attainment		Nonattainment.

UTAH—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
The following Townships or portions thereof as noted (including Tooele City: Township 1 South Range 3 West; Township 2 South Range 3 West; Township 3 South Range 3 West; Township 3 South Range 4 West; Township 2 South Range 4 West; Township 2 South Range 5 West; Township 3 South Range 5 West; Township 3 South Range 6 West; Township 2 South Range 6 West; Township 1 South Range 6 West; Township 1 South Range 5 West; Township 1 South Range 4 West; Township 1 South Range 7 West; Township 2 South Range 7 West; Township 3 South Range 7 West; all Sections within Township 4 South Range 7 West except for Sections 29, 30, 31 and 32; Township 4 South Range 6 West; Township 4 South Range 5 West; Township 4 South Range 4 West; Township 4 South Range 3 West.				
Weber County (part)		Unclassifiable/Attainment		Nonattainment.
The area of Weber County that lies west of the Wasatch Mountain Range with an eastern boundary for Weber County to be defined as the following Townships (or portion thereof) extending to the western boundary of Weber County: Township 5 North Range 1 West; Township 6 North Range 1 West; all Sections within Township 7 North Range 1 West located within Weber County except for Sections 1, 2, 3, 4, 11, 12, 13 and 24; Township 7 North Range 2 West (portion located in Weber County).				
Rest of State:				
Beaver County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Box Elder County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cache County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Daggett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Duchesne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grand County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juab County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Millard County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Piute County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rich County		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Juan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sanpete County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sevier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Summit County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tooele County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Uintah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Utah County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wasatch County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Weber County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 47. Section 81.346 is amended as follows:

■ a. By revising the table heading for ''Vermont—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Vermont—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.346 Vermont.

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Vermont—$PM_{2.5}$ (Annual NAAQS)

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VERMONT—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Statewide:				
Addison County		Unclassifiable Attainment		Unclassifiable/Attainment.
Bennington County		Unclassifiable Attainment		Unclassifiable/Attainment.
Caledonia County		Unclassifiable Attainment		Unclassifiable/Attainment.
Chittenden County		Unclassifiable Attainment		Unclassifiable/Attainment.
Essex County		Unclassifiable Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable Attainment		Unclassifiable/Attainment.
Grand Isle County		Unclassifiable Attainment		Unclassifiable/Attainment.
Lamoille County		Unclassifiable Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable Attainment		Unclassifiable/Attainment.
Orleans County		Unclassifiable Attainment		Unclassifiable/Attainment.
Rutland County		Unclassifiable Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable Attainment		Unclassifiable/Attainment.
Windham County		Unclassifiable Attainment		Unclassifiable/Attainment.
Windsor County		Unclassifiable Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 48. Section 81.347 is amended as follows:

■ a. By revising the table heading for ''Virginia—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Virginia—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.347 Virginia.

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Virginia—$PM_{2.5}$ (Annual NAAQS)

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VIRGINIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
AQCR 047 National Capital Interstate (DC-MD-VA) (part):				
Arlington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fairfax County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Loudoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prince William County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Alexandria City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fairfax City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Falls Church City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manassas City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manassas Park City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 207 Eastern Tennessee-SW Virginia Interstate (remainder of):				
Bland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buchanan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carroll County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dickenson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grayson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Russell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Scott County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Smyth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tazewell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wise County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wythe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bristol City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Galax City		Unclassifiable/Attainment		Unclassifiable/Attainment.

VIRGINIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Norton City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 222 Central Virginia Intrastate:				
Amelia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Amherst County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Appomattox County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bedford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brunswick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buckingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Campbell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charlotte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Halifax County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lunenburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mecklenburg County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nottoway County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Patrick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pittsylvania County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prince Edward County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bedford City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Danville City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lynchburg City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Martinsville City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 223 Hampton Roads Intrastate (remainder of):				
Southampton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 224 NE Virginia Intrastate (remainder of):				
Accomack County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Albemarle County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caroline County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Culpeper County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Essex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fauquier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fluvanna County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greene County		Unclassifiable/Attainment		Unclassifiable/Attainment.
King and Queen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
King George County		Unclassifiable/Attainment		Unclassifiable/Attainment.
King William County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lancaster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Louisa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Madison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mathews County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Middlesex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nelson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northampton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Northumberland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orange County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rappahannock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richmond County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Westmoreland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Charlottesville City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 225 State Capital Intrastate (remainder of):				
Dinwiddie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Goochland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greensville County		Unclassifiable/Attainment		Unclassifiable/Attainment.
New Kent County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Powhatan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Surry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sussex County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Emporia City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Petersburg City		Unclassifiable/Attainment		Unclassifiable/Attainment.
AQCR 226 Valley of Virginia Intrastate:				
Alleghany County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Augusta County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bath County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clarke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Craig County		Unclassifiable/Attainment		Unclassifiable/Attainment.

VIRGINIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Floyd County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Giles County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Highland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Montgomery County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Page County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pulaski County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockbridge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rockingham County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shenandoah County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Warren County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buena Vista City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Covington City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrisonburg City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lexington City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Radford City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Staunton City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waynesboro City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Frederick Co., VA:				
Frederick County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winchester City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fredericksburg, VA:				
Spotsylvania County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stafford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
City of Fredericksburg		Unclassifiable/Attainment		Unclassifiable/Attainment.
Norfolk-Virginia-Beach Newport News (Hampton Roads), VA:				
Gloucester County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Isle of Wight County		Unclassifiable/Attainment		Unclassifiable/Attainment.
James City County		Unclassifiable/Attainment		Unclassifiable/Attainment.
York County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chesapeake City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hampton City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Newport News City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Norfolk City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Poquoson City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Portsmouth City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Suffolk City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Virginia Beach City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Williamsburg City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richmond-Petersburg, VA:				
Charles City County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chesterfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hanover County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Henrico County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Prince George County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Colonial Heights City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hopewell City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richmond City		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roanoke, VA:				
Botetourt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roanoke County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roanoke City.		Unclassifiable/Attainment		Unclassifiable/Attainment.
Salem City		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 49. Section 81.348 is amended as follows:

■ a. By revising the table heading for ''Washington—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Washington—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.348 Washington.

* * * * *

Washington—$PM_{2.5}$ (Annual NAAQS)

* * * * *

WASHINGTON—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Tacoma, WA:				
Pierce County (part)		Unclassifiable/Attainment		Nonattainment.
Starting from where an extension of Kennedy Road Northeast would intersect Commencement Bay, proceed north to the intersection of Marine View Drive (State Route 509) and Kennedy Road Northeast. Proceed south on Marine View Drive to Hylebos Creek. Proceed south along Hylebos Creek to 12th Street East. Proceed east on 12th Street East to 70th Avenue East. Proceed south on 70th Avenue East to State Route 99 (S.R. 99). Proceed north on S.R. 99 0.1 mile north of Birch Street to a driveway to the east. Proceed east along the driveway and continue east along the same alignment to the Pierce County Line/Comprehensive Urban Growth Area (CUGA) boundary. Proceed east along the Pierce County Line/CUGA boundary to the eastern boundary of Edgewood. Proceed south along the eastern boundary of Edgewood to eastern boundary of the Sumner Urban Service Area. Proceed south along eastern boundary of the Sumner Urban Service Area to the eastern boundary of the Puyallup Urban Service Area. Proceed south along the eastern boundary of the Puyallup Urban Service Area to the eastern boundary of Puyallup/CUGA boundary. Proceed south and then west along the CUGA boundary to the eastern boundary of McChord Air Force Base. Proceed north along the eastern boundary of McChord Air Force Base to the northernmost point on the eastern boundary. Proceed from the northernmost point on the eastern boundary of McChord Air Force Base to the south right-of-way of S.R. 512. Proceed west along the south right-of-way of S.R. 512 to the south right-of-way of I–5. Proceed south along the south right-of-way to I–5 to the point opposite the boundary between Lakewood and Camp Murray. Proceed north across I–5 to the boundary between Lakewood and Camp Murray. Proceed north along the western boundary of Lakewood to the point where the western boundary coincides with the CUGA boundary. Proceed north along the CUGA boundary to the southern boundary of Point Defiance Park. Proceed east along the southern boundary of Point Defiance Park to Commencement Bay/CUGA boundary. Proceed southeast, then northeast, and finally northwest along the CUGA boundary to the starting point.				
Rest of State:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Asotin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Benton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clallam County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cowlitz County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.

WASHINGTON—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Ferry County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Franklin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Garfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grays Harbor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Island County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
King County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kitsap County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kittitas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Klickitat County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Okanogan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pacific County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pend Oreille County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pierce County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Juan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Skagit County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Skamania County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Snohomish County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Spokane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Stevens County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Thurston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wahkiakum County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walla Walla County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whatcom County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Whitman County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yakima County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 50. Section 81.349 is amended as follows:

■ a. By revising the table heading for ''West Virginia—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''West Virginia—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.349 West Virginia.

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West Virginia—$PM_{2.5}$ (Annual NAAQS)

* * * * *

WEST VIRGINIA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Charleston, WV:				
Kanawha County		Unclassifiable/Attainment		Nonattainment.
Putnam County		Unclassifiable/Attainment		Nonattainment.
Steubenville-Weirton, OH-WV:				
Brooke County		Unclassifiable/Attainment		Nonattainment.
Hancock County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
Barbour County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Berkley County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Boone County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Braxton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cabell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calhoun County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clay County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Doddridge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gilmer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Greenbrier County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hampshire County		Unclassifiable/Attainment		Unclassifiable/Attainment.

WEST VIRGINIA—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Hardy County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Harrison County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lewis County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Logan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
McDowell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mason County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marion County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marshall County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mercer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mineral County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mingo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monongalia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morgan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Nicholas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ohio County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pendleton County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pleasants County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pocahontas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Preston County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Raleigh County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Randolph County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ritchie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Roane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Summers County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tucker County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tyler County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Upshur County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wayne County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Webster County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wetzel County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wirt County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wood County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wyoming County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 51. Section 81.350 is amended as follows:

■ a. By revising the table heading for ''Wisconsin—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Wisconsin—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.350 Wisconsin.

* * * * *

Wisconsin—$PM_{2.5}$ (Annual NAAQS)

* * * * *

WISCONSIN—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Milwaukee-Racine, WI:				
Milwaukee County		Unclassifiable/Attainment		Nonattainment.
Racine County		Unclassifiable/Attainment		Nonattainment.
Waukesha County		Unclassifiable/Attainment		Nonattainment.
Rest of State:				
Adams County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ashland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bayfield County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Brown County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Buffalo County		Unclassifiable/Attainment		Unclassifiable/Attainment.

WISCONSIN—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Burnett County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Calumet County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Chippewa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Clark County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Columbia County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crawford County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dane County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dodge County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Door County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Douglas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dunn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Eau Claire County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Florence County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fond du Lac County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Forest County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Grant County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Green County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Green Lake County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iowa County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Iron County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jackson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jefferson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juneau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kenosha County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Kewaunee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
La Crosse County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lafayette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Langlade County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manitowoc County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marathon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marinette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Marquette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Menominee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Monroe County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oconto County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Oneida County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Outagamie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ozaukee County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pepin County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Pierce County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Polk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Portage County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Price County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Richland County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rock County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rusk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Croix County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sauk County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sawyer County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Shawano County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheboygan County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Taylor County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trempealeau County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vernon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vilas County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Walworth County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washburn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washington County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waupaca County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Waushara County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Winnebago County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Wood County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 52. Section 81.351 is amended as follows:

■ a. By revising the table heading for ''Wyoming—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Wyoming—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.351 Wyoming.

* * * * *

Wyoming—$PM_{2.5}$ (Annual NAAQS)

* * * * *

WYOMING—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Casper, WY:				
Natrona County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Casper.				
Cheyenne, WY:				
Laramie County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Cheyenne.				
Evanston, WY:				
Uinta County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Evanston.				
Gillette, WY:				
Campbell County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Gillette.				
Jackson, WY:				
Teton County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Jackson.				
Lander, WY:				
Fremont County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Lander.				
Laramie, WY:				
Albany County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Laramie.				
Riverton, WY:				
Fremont County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Riverton.				
Rock Springs, WY:				
Sweetwater County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Rock Springs.				
Sheridan, WY:				
Sheridan County (part)		Unclassifiable/Attainment		Unclassifiable/Attainment.
The portion within the City of Sheridan.				
Rest of State:				
Albany County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Big Horn County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Campbell County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carbon County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Converse County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Crook County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fremont County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Goshen County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hot Springs County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Johnson County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Laramie County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lincoln County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Natrona County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Niobrara County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Park County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Platte County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sheridan County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sublette County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sweetwater County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Teton County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Uinta County (remainder)		Unclassifiable/Attainment		Unclassifiable/Attainment.
Washakie County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Weston County		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 53. Section 81.352 is amended as follows:

■ a. By revising the table heading for ''American Samoa—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''American Samoa—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.352 American Samoa.

* * * * *

American Samoa—$PM_{2.5}$ (Annual NAAQS)

* * * * *

AMERICAN SAMOA—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Territory wide:				
Eastern District		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manu'a District		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rose Island		Unclassifiable/Attainment		Unclassifiable/Attainment.
Swains Island		Unclassifiable/Attainment		Unclassifiable/Attainment.
Western District		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 54 Section 81.353 is amended as follows:

■ a. By revising the table heading for ''Guam—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Guam—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.353 Guam.

* * * * *

Guam—$PM_{2.5}$ (Annual NAAQS)

* * * * *

GUAM—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Territory wide:				
Guam		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 55. Section 81.354 is amended as follows:

■ a. By revising the table heading for ''Northern Mariana Islands—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Northern Mariana Islands—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.354 Northern Mariana Islands.

* * * * *

Northern Mariana Islands—$PM_{2.5}$ (Annual NAAQS)

* * * * *

NORTHERN MARIANA ISLANDS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Territory wide:				
Northern Islands Municipality		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rota Municipality		Unclassifiable/Attainment		Unclassifiable/Attainment.
Saipan Municipality		Unclassifiable/Attainment		Unclassifiable/Attainment.
Tinian Municipality		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 56. Section 81.355 is amended as follows:

■ a. By revising the table heading for ''Puerto Rico—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Puerto Rico—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.355 Puerto Rico.

* * * * *

Puerto Rico—$PM_{2.5}$ (Annual NAAQS)

* * * * *

PUERTO RICO—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Territory wide:				
Adjuntas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aguada Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aguadilla Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aguas Buenas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Aibonito Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Añasco Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arecibo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Arroyo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barceloneta Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Barranquitas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Bayamón County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cabo Rojo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Caguas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Camuy Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Canóvanas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Carolina Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cataño County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cayey Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ceiba Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ciales Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Cidra Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Coamo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Comerío Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Corozal Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Culebra Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Dorado Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Fajardo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Florida Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guánica Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guayama Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guayanilla Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Guaynabo County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Gurabo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hatillo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Hormigueros Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Humacao Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Isabela Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Jayuya Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juana Díaz Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Juncos Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lajas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Lares Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Las Marías Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Las Piedras Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Loíza Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Luquillo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Manatí Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maricao Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Maunabo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Mayagnez Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Moca Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Morovis Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Naguabo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Naranjito Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Orocovis Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Patillas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Peñuelas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Ponce Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Quebradillas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Rincón Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Río Grande Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Sabana Grande Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Salinas Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Germán Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.

PUERTO RICO—$PM_{2.5}$—Continued

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
San Juan Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Lorenzo Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
San Sebastián Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Santa Isabel Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Toa Alta Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Toa Baja County		Unclassifiable/Attainment		Unclassifiable/Attainment.
Trujillo Alto Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Utuado Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vega Alta Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vega Baja Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Vieques Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Villalba Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yabucoa Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.
Yauco Municipio		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after January 5, 2005, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

■ 57. Section 81.356 is amended as follows:

■ a. By revising the table heading for ''Virgin Islands—$PM_{2.5}$'' to read as set forth below.

■ b. By adding a new table entitled ''Virgin Islands—$PM_{2.5}$ (24-Hour NAAQS)'' to the end of the section.

§ 81.356 Virgin Islands.

* * * * *

Virgin Islands—$PM_{2.5}$ (Annual NAAQS)

* * * * *

VIRGIN ISLANDS—$PM_{2.5}$

[24-hour NAAQS]

Designated area	Designation for the 1997 NAAQS [a]		Designation for the 2006 NAAQS [a]	
	Date [1]	Type	Date [2]	Type
Territory wide:				
St. Croix		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. John		Unclassifiable/Attainment		Unclassifiable/Attainment.
St. Thomas		Unclassifiable/Attainment		Unclassifiable/Attainment.

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is 90 days after November 13, 2009, unless otherwise noted.
[2] This date is 30 days after November 13, 2009, unless otherwise noted.

[FR Doc. E9–25711 Filed 11–12–09; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Friday,
November 13, 2009

Part III

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2007–0584; FRL–8979–8]

RIN 2050–AG16

Oil Pollution Prevention; Spill Prevention, Control, and Countermeasure (SPCC) Rule—Amendments

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: On December 5, 2008, EPA amended the Spill Prevention Control, and Countermeasures (SPCC) rule to provide increased clarity with respect to specific regulatory requirements, to tailor requirements to particular industry sectors, and to streamline certain rule requirements. The Agency subsequently delayed the effective date of these amendments to January 14, 2010, to allow the Agency time to review the amendments to ensure that they properly reflect consideration of all relevant facts. EPA also requested public comment on the delay of the effective date and its duration, and on the December 2008 amendments. Having reviewed the record for the amendments and the additional comments, EPA has decided to make only limited changes to the amendments. With respect to the majority of the December amendments, EPA is either taking no action or providing minor technical corrections. EPA is, however, removing the following provisions in the December 2008 amendments: the exclusion of farms and oil production facilities from the loading/unloading rack requirements; the exemption for produced water containers at an oil production facility; and the alternative qualified facility eligibility criteria for an oil production facility.

DATES: This final rule is effective on January 14, 2010.

ADDRESSES: The public docket for this rulemaking, Docket ID No. EPA–HQ–OPA–2007–0584, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in the index at *http://www.regulations.gov.* Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which 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 at *http://www.regulations.gov* or in hard copy at the EPA Docket, EPA/DC, EPA West, Room 3334, 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 of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 800–424–9346 or TDD at 800–553–7672 (hearing impaired). In the Washington, DC metropolitan area, contact the Superfund, TRI, EPCRA, RMP, and Oil Information Center at 703–412–9810 or TDD 703–412–3323. For more detailed information on specific aspects of this final rule, contact either Vanessa E. Principe at 202–564–7913 (*principe.vanessa@epa.gov*), or Mark W. Howard at 202–564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC, 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION: The contents of this preamble are:

I. General Information
II. Entities Potentially Affected by This Final Rule
III. Statutory Authority and Delegation of Authority
IV. Background
V. This Action
A. Final Amendments Effective without Change
1. Hot-Mix Asphalt (HMA)
2. Pesticide Application Equipment and Related Mix Containers
3. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks
4. Residential Heating Oil Containers
5. Definition of Facility
6. Facility Diagram
7. Loading/Unloading Racks
8. General Secondary Containment
9. General Secondary Containment for Non-Transportation-Related Tank Trucks
10. Security
11. Integrity Testing
12. Integrity Testing Requirements for Animal Fats and Vegetable Oils
13. Oil Production Facilities
a. Definition of Production Facility
b. Modifications to § 112.9 for Drilling and Workover Facilities
c. Exemption for Certain Intra-Facility Gathering Lines
d. Flowlines and Intra-facility Gathering Lines
(i) Compliance Alternative in Lieu of Secondary Containment for Flowlines and Intra-facility Gathering Lines
(ii) Contingency Plan for Flowlines and Intra-facility Gathering Lines
(iii) Requirements for a Flowline and Intra-Facility Gathering Line Maintenance Program
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I. General Information

On December 5, 2008, the Environmental Protection Agency (EPA or the Agency) amended the Spill Prevention, Control, and Countermeasure (SPCC) rule to address a number of issues raised by the regulated community (73 FR 74236). EPA is now amending the December

2008 amendments to make technical corrections. In addition, EPA has decided to remove three provisions from the SPCC rule it had adopted in December 2008. In all other respects, the amendments have not been changed. The following provisions, which are intended to clarify, tailor, and streamline certain requirements for those facility owners or operators who are required to prepare and implement an SPCC Plan (or ''Plan''), will become effective without modification:

- Exemption for hot-mix asphalt (HMA);
- Exemption for pesticide application equipment and related mix containers, regardless of ownership or where used, that may currently be subject to the SPCC rule when crop oil or adjuvant oil is added to pesticide formulations;
- Exemption for residential heating oil containers, which applies to aboveground containers, as well as completely buried heating oil containers, at single-family residences, including those located at farms;
- Clarification that the definition of mobile refueler includes a nurse tank, which is a mobile/portable container used at farms to store and transport fuel for transfers to or from farm equipment (such as tractors and combines) to other bulk storage containers (such as containers used to provide fuel to wellhead/relift pumps) at the farm;
- Amendment of the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to reaffirm that the ''facility'' definition governs the applicability of 40 CFR part 112;
- Amendment of the facility diagram requirement at § 112.7(a)(3) to clarify how containers, fixed and mobile, are identified on the facility diagram. EPA also clarified that where facility diagrams become complicated due to the presence of multiple fixed oil storage containers or complex piping/transfer areas at a facility, the owner or operator can include that information separately in the SPCC Plan in an accompanying table or key. For any mobile or portable containers located in a certain area of the facility, an owner or operator can mark the area on the diagram, as well as indicate the potential range in number of containers and the anticipated contents and capacities of the mobile or portable containers;
- Definition of the term ''loading/unloading rack,'' and clarification that this definition governs the applicability of the provisions for facility tank car and tank truck loading/unloading racks at § 112.7(h);
- Amendment of the general secondary containment requirements at § 112.7(c) to clarify the scope of secondary containment so that an owner or operator need only take into consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with current Agency guidance. This amendment also provides additional examples of prevention systems for onshore facilities found at § 112.7(c)(1);
- Extension of the exemption from the sized secondary containment requirement for mobile refuelers provided in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to non-transportation-related tank trucks at a facility subject to the SPCC rule;
- Amendment of the facility security requirements at § 112.7(g) to allow an owner or operator of a facility to tailor his security measures to the facility's specific characteristics and location;
- Amendment of the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to allow an owner or operator to consult and rely on industry standards to determine the appropriate qualifications for personnel performing tests and inspections, as well as the type and frequency of integrity testing required for a particular container size and configuration;
- Amendment of the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of animal fats and vegetable oils (AFVOs) so as to provide the Professional Engineer (PE) or an owner or operator self-certifying an SPCC Plan with the flexibility to determine the scope of integrity testing that is appropriate for containers that store AFVOs, based on compliance with certain FDA regulations and other criteria relating to container construction and configuration;
- Amendment of the definition of ''production facility'' to be consistent with the amended definition of ''facility'';
- Clarification that drilling and workover activities are not subject to the provisions at § 112.9;
- Alternative compliance option for flow-through process vessels at oil production facilities requiring general secondary containment and additional oil spill prevention measures in lieu of the sized secondary containment requirements that would apply to this equipment;
- Definition of the term ''produced water container'', and an alternative compliance option for these containers at oil production facilities requiring general secondary containment, a PE-certified process or procedure designed to remove free-phase oil that accumulates on the surface of the produced water container, and additional oil spill prevention measures in lieu of the sized secondary containment requirements that would apply to these containers;
- Exemption for certain intra-facility gathering lines subject to requirements of the U.S. Department of Transportation's (DOT's) pipeline regulations in 49 CFR parts 192 or 195;
- Specific requirements for a flowline/intra-facility gathering line maintenance program and an alternative compliance option of contingency planning for flowlines and intra-facility gathering lines in lieu of the general secondary containment requirements; and
- Clarification of the definition of ''permanently closed'' as it applies to oil production facilities and containers present at an oil production facility.

The following provisions of the 2008 amendments will become effective with technical corrections:

- Exemption for underground oil storage tanks that supply emergency diesel generators at nuclear power generation facilities, revising the provision to state that the exemption applies ''*provided that such a tank* is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria*, including but* not limited to* * *'' (emphasis added);
- Designation of a subset of qualified facilities (''Tier I qualified facilities'') with a set of streamlined SPCC rule requirements. The owner or operator of a Tier I qualified facility has the option to complete a self-certified SPCC Plan template (found in Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan. In § 112.6 and the Appendix G SPCC Plan template, technical corrections include clarifications and corrections of typographical and formatting errors; and,
- Amendment of the compliance date provision for new oil production facilities, so that it applies to new oil production facilities that begin operations after November 10, 2010. This change is necessary to align with the current compliance date for other facilities.

In this notice, EPA is also removing the paragraphs in § 112.3 specific to farms because on June 19, 2009 EPA established the same compliance dates for farms as for all other facilities (74 FR 29136); such differentiated provisions are no longer necessary.

Additionally, EPA was particularly interested in receiving comments on

these provisions as indicated in the February 2009 notice. After consideration of all relevant facts and public comments, EPA is removing the following provisions which were promulgated on December 5, 2008 from the SPCC regulation:

- The exemption for certain produced water containers that do not contain oil in amounts that may be harmful as certified by a PE; and
- The alternative criteria for an oil production facility to be eligible to self-certify an SPCC Plan as a qualified facility.

The Agency is also removing the specific exclusion of oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). Finally, EPA commits to continue inter-Agency discussions with DOT to clarify jurisdiction over facilities as described in the joint memorandum ''Jurisdiction over Breakout Tanks/Bulk Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities'' (February 4, 2000).

This rulemaking marks the completion of the SPCC action proposed on October 15, 2007 (72 FR 58378), finalized on December 5, 2008 (73 FR 74236), and for which the Agency considered public comments again in February 2009 (74 FR 5900, February 3, 2009). Hereafter, comments addressing the December 5, 2008 amendments will be referred to as ''comments from the 2009 comment period.'' However, EPA recognizes that because of the changes in this action, and specifically provisions that have been removed from the December 2008 Amendments, facilities may need additional time to comply with the SPCC amendments. For example, owners or operators of facilities with marginal wells may need a PE to certify amendments to their SPCC Plan if the facility does not meet the qualified facility eligibility criteria. Because of the uncertainty surrounding the final amendments to the December 5, 2008 rule and the delay of the effective date, the Agency will propose to extend the compliance date.

II. Entities Potentially Affected by This Final Rule

Industry sector	NAICS Code
Oil Production	211111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31–33
Real Estate Rental and Leasing	531–533
Retail Trade	441–446, 448, 451–454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561–562
Transportation	481–488
Arts Entertainment & Recreation	711–713
Other Services (Except Public Administration)	811–813
Petroleum Bulk Stations and Terminals	4247
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline stations	4471
Information Finance and Insurance	51, 52
Mining	212
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a clear guide for readers to consider regarding entities that potentially could be affected by this action. However, this action may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

III. Statutory Authority and Delegation of Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act), 33 U.S.C. 1321(j)(1)(C), requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil to navigable waters or adjoining shorelines from vessels and facilities and to contain such discharges. The President delegated the authority to regulate non-transportation-related onshore facilities to EPA in Executive Order 11548 (35 FR 11677, July 22, 1970), which was superseded by Executive Order 12777 (56 FR 54757, October 22, 1991). An MOU between DOT and EPA (36 FR 24080, November 24, 1971) established the definitions of transportation-related and non-transportation-related facilities. An MOU between EPA, the U.S. Department of the Interior (DOI), and DOT (59 FR 34102, July 1, 1994) re-delegated the responsibility to regulate certain offshore facilities from DOI to EPA.

IV. Background

The SPCC rule was originally promulgated on December 11, 1973 (38 FR 34164). On July 17, 2002, EPA

published a final rule amending the SPCC rule, formally known as the Oil Pollution Prevention regulation (40 CFR part 112). The July 2002 rule amendments (67 FR 47042) included revisions to the requirements for SPCC Plans and for Facility Response Plans (FRPs). It also included new subparts outlining the requirements for various classes of oil; revised the applicability of the regulation; amended the requirements for completing SPCC Plans; and made other modifications. After publication of these rule amendments, several members of the regulated community filed legal challenges to certain aspects.[1] All of the issues raised in the litigation have now been resolved; EPA published clarifications in the **Federal Register** to several aspects of the amended rule (69 FR 29728, May 25, 2004).[2] In a separate **Federal Register** notice, the Agency published a final rule announcing the vacatur of the July 17, 2002 definition of ''navigable waters'' in 40 CFR part 112,[3] and restoring it back to the regulatory definition promulgated by EPA in 1973 (73 FR 71941, November 26, 2008).

Concerns were also raised about the ability to implement certain aspects of the July 2002 rule amendments. As a result, EPA proposed additional amendments to the SPCC rule in December 2005 and finalized them in December 2006 to address a number of issues, including those pertaining to certain ''qualified'' facilities, qualified oil-filled operational equipment, motive power containers, mobile refuelers, removal of provisions inapplicable to AFVOs, and the compliance date for farms (71 FR 77266, December 26, 2006). Additionally, EPA made available the *SPCC Guidance for Regional Inspectors* in December 2005. This guidance document is intended to assist regional inspectors, as well as members of the regulated community, in reviewing the implementation of the SPCC rule at a regulated facility. The guidance document is designed to provide more detail about the rule's applicability, to help clarify the role of the inspector in reviewing and evaluating a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. The guidance is available on the Agency's Web site at *http://www.epa.gov/emergencies.* EPA intends to revise this guidance to address the regulatory amendments in this action and the December 2006 amendments (71 FR 77266, December 26, 2006). EPA welcomes comments from the regulated community and the public on the guidance document at any time. Instructions for submitting comments are provided on the EPA Office of Emergency Management Web site.

On December 5, 2008 (73 FR 74236), EPA again amended the SPCC rule to clarify certain provisions, to tailor requirements to particular industry sectors, and to streamline certain rule requirements. These requirements were to become effective on February 3, 2009. However, the effective date of the December 2008 rulemaking was delayed for 60 days from February 3, 2009 to April 4, 2009, in accordance with the January 20, 2009 White House memorandum entitled ''Regulatory Review,'' and the January 21, 2009 memorandum from the Office of Management and Budget entitled ''Implementation of Memorandum Concerning Regulatory Review'' (M–09–08, January 21, 2009 OMB memorandum). (These memoranda are available for review in the docket for this rulemaking.) The Agency took this action to ensure that the rule properly reflected consideration of all relevant facts. Accordingly, EPA requested public comment on the delay of the effective date and its duration, and further comment on the regulatory amendments contained in the final rule amendments (74 FR 5900, February 3, 2009). On April 1, 2009, the Agency further delayed the effective date of the December 2008 rulemaking until January 14, 2010 (74 FR 14736). The Agency took this action to allow sufficient time to address the comments received on the February 3, 2009 notice. EPA is now promulgating several limited revisions to the December 2008 amendments as a result of the Agency's review of comments and consideration of all relevant facts.

Section V of this notice describes EPA's action on the December 2008 amendments. For a complete discussion of the comments received during the 2009 comment period, see *Comment and Response Document for 2008 Final SPCC Amendments, Comment Period Ending March 2009*, a copy of which is available in the docket for this rulemaking.

Furthermore, EPA has extended the dates for preparing or amending, and implementing revised SPCC Plans in 40 CFR 112.3(a), (b), and (c) in a rule published on June 19, 2009 (74 FR 29136). In that action, the Agency also established dates for the owners and operators of farms to prepare or amend their SPCC Plans, and implement those Plans.

V. This Action

A. Final Amendments Effective Without Change

EPA has not modified the following provisions of the December 2008 amendments (73 FR 74236, December 5, 2008):

- Exemptions for HMA and HMA containers, pesticide application equipment and related mix containers, and heating oil containers at single-family residences, including those located at farms;
- Clarification that the definition of mobile refueler includes a nurse tank at farms;
- Amended definition of ''facility'' to clarify the existing flexibility associated with describing a facility's boundaries;
- Amended facility diagram requirements to provide additional flexibility;
- A definition of ''loading/unloading rack'' to clarify the oil transfer equipment subject to the provisions for facility tank car and tank truck loading/unloading racks, as well as amended provisions for this equipment;
- Amended general secondary containment requirements to provide more clarity;
- Exemption of non-transportation-related tank trucks from the sized secondary containment requirements;
- Amended security requirements;
- Amended integrity testing requirements to allow greater flexibility in the use of industry standards;
- Amended integrity testing requirements for containers that store AFVOs and meet certain criteria;
- Amended definition of ''production facility'';
- Clarification that drilling and workover activities are not subject to the provisions at § 112.9;
- Exemption for certain intra-facility gathering lines at oil production facilities from the SPCC requirements;
- More prescriptive requirements for a flowline/intra-facility gathering line maintenance program for all oil production facilities and an alternative

[1] *American Petroleum Institute* v. *Johnson,* 571 F.Supp. 2d 165 (D.D.C. 2008). The only issue resolved through litigation was the challenge to the definition of navigable waters in the July 2002 rule amendment.

[2] Several comments requested that the Agency codify the clarifications as part of the December 2008 rulemaking. To the extent the subject matter of the clarification were reflected in the rulemaking, the Agency either incorporated the clarification in the regulatory text or reaffirmed the Agency's position in the preamble. See 73 FR 74236, December 5, 2008.

[3] This action was taken in accordance with an order issued by the United States District Court for the District of Columbia (D.D.C.) in *American Petroleum Institute* v. *Johnson,* 571 F.Supp.2d 165 (D.D.C. 2008).

compliance option of contingency planning for flowlines and intra-facility gathering lines in lieu of all secondary containment;

- Alternative compliance option for flow-through process vessels at oil production facilities to comply with the general secondary containment requirements and additional oil spill prevention measures in lieu of the sized secondary containment requirements;
- A definition of ''produced water container'';
- Alternative compliance option to sized secondary containment for produced water containers that includes general secondary containment, a PE-certified process or procedure designed to remove free-phase oil that accumulates on the surface of the produced water container, and additional oil spill prevention measures;
- Clarification of the definition of ''permanently closed'' as it applies to an oil production facility; and
- Technical corrections.

This preamble discusses each of these provisions, and any related comments received during the 2009 comment period that raise substantive policy issues, in more detail below. For a complete discussion of the comments received in 2009, see *Comment and Response Document for 2008 Final SPCC Amendments, Comment Period Ending March 2009*, a copy of which is available in the docket for this rulemaking.

1. Hot-Mix Asphalt (HMA)

In the December 2008 amendments, EPA exempted HMA and HMA containers from SPCC rule applicability. HMA is a blend of asphalt cement (AC) and aggregate material, such as stone, sand, or gravel, which is formed into final paving products. All types of asphalt, including HMA, are petroleum products.

EPA exempted HMA from SPCC rule applicability by adding a new paragraph (8) under the general applicability section, § 112.1(d), and modifying § 112.1(d)(2) so that the capacity of HMA containers is not counted toward the facility's oil storage capacity calculation. EPA took this action based on the fact that this material is unlikely to flow as a result of the entrained aggregate, such that there would be very few circumstances, if any, in which a discharge of HMA would have the potential to reach navigable waters or adjoining shorelines. This is particularly of concern at facilities subject to the SPCC requirements solely because of the presence of HMA. See Section V.A of the December 5, 2008 notice at 73 FR 74240 for more information about this amendment.

EPA received one comment that recommended that EPA also extend the exemption to other products like paraffin wax, asphalt cement, certain resins, and various animal fats, and suggested the exemption be based on the unique ''self-containing'' characteristics of all these materials and the low probability of a spill reaching navigable waters or adjoining shorelines. The Agency disagrees with this comment. As EPA discussed in the December 5, 2008 amendments, these materials, unlike HMA, do have the potential to discharge in quantities that may be harmful into navigable waters or adjoining shorelines, because they are generally stored at elevated temperatures, and thus are capable of flowing if there is a release from the container. Conversely, HMA is unlikely to flow as a result of the entrained aggregate. The commenter did not provide new or compelling data supporting their position. Further, it should be noted that the SPCC rule only applies to facilities that, due to their location, can reasonably be expected to discharge oil to navigable waters or adjoining shorelines. In determining whether there is a reasonable expectation of discharge, an owner or operator of a facility may consider the nature and flow properties of the oils handled at the facility. If a facility owner or operator determines that there is no reasonable expectation of a discharge of oil to navigable waters or adjoining shorelines from every single oil container at the facility (excluding exempt containers), then the facility would not be subject to the rule's requirements. However, if the facility owner or operator determines that any oil container (excluding exempt containers) may have a reasonable expectation of a discharge of oil to navigable waters or adjoining shorelines, then the facility is subject to the rule provisions.

Other comments generally supported the amendments to the exemption for HMA and HMA containers. Based on this and review of all relevant facts, the Agency is making no changes to this provision.

2. Pesticide Application Equipment and Related Mix Containers

In the December 2008 amendments, EPA added a new paragraph (10) under the general applicability section, § 112.1(d), to exempt all pesticide application equipment and related mix containers regardless of ownership or where used when crop oil or adjuvant oil is added to the pesticide formulation. EPA also modified § 112.1(d)(2) so that the capacity of pesticide application equipment and related mix containers is not counted toward the facility's oil storage capacity calculation. Pesticide application equipment includes ground boom applicators, airblast sprayers, and specialty aircraft containers/equipment that are used to apply measured quantities of pesticides to crops and/or soil. Related mix containers are those used to mix pesticides with water and, as needed, adjuvant oils, just prior to loading into the application equipment. EPA adopted this exemption because this type of pesticide use and related mix containers are already subject to regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as codified in 40 CFR part 165, to assure the safe use (including discharge), reuse, storage, and disposal of pesticide containers. Containers (55 U.S. gallons or greater in capacity) storing oil prior to mixing it with a pesticide, or containers used to store pesticides that contain oil (after mixing occurs), are considered bulk storage containers and are not exempt under the SPCC rule. *See* Section V.B of the December 5, 2008 notice at 73 FR 74240 for more information about this amendment.

Comments generally supported the exemption for pesticide application equipment and related mix containers. Based on this and review of all relevant facts, the Agency is making no change to this provision.

3. Applicability of Mobile Refueler Requirements to Farm Nurse Tanks

In Section V.B. of the preamble to the December 2008 amendments (73 FR 74241, December 5, 2008), EPA clarified that the definition of mobile refueler, as promulgated in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006), includes a nurse tank, which is a mobile/portable container used at farms to store and transport fuel for transfers to or from farm equipment (such as tractors and combines) to other bulk storage containers (such as containers used to provide fuel to wellhead/relift pumps) at the farm. A nurse tank is often mounted on a trailer for transport around the farm, and thus its function is consistent with that of a mobile refueler. A nurse tank, like other types of mobile refuelers, is exempt from the sized secondary containment requirements at §§ 112.8(c)(2) and 112.12(c)(2), but is still subject to the general secondary containment requirements at § 112.7(c).

Comments generally supported the clarification regarding the applicability of mobile refueler requirements to farm nurse tanks. Based on this and review of all relevant facts, the Agency is making no change to this clarification.

4. Residential Heating Oil Containers

In the December 2008 amendments, EPA added a new paragraph (9) under the general applicability section, § 112.1(d), to exempt from SPCC applicability containers that are used to store oil for the sole purpose of heating single-family residences (including a residence at a farm). EPA also modified § 112.1(d)(2) so that the capacity of single-family residential heating oil containers is not counted toward facility aggregate oil storage capacity. Thus, the owner or operator is not required to count any residential heating oil container (i.e., those at non-commercial buildings) as part of the facility's aggregate storage capacity for the purpose of determining SPCC applicability, and no SPCC requirements will apply to these exempt containers. The SPCC requirements continue to apply, however, to oil containers used to heat other non-residential buildings within a facility, because the exemption covers only residential heating oil containers at single family residences. See Section V.C of the December 5, 2008 notice at 73 FR 74243 for more information about this amendment.

Comments generally supported the amendments to the exemption for residential heating oil containers. The Agency did not intend for the presence of heating oil containers at a single-family residence to, by itself, trigger SPCC applicability. Based on this and review of all relevant facts, the Agency is making no change to this provision.

5. Definition of Facility

In the December 2008 amendments, EPA amended the definition of ''facility,'' as found in § 112.2. (EPA defined both ''facility'' and ''production facility'' at § 112.2 in the July 2002 amendments to the SPCC rule (67 FR 47042, July 17, 2002).) EPA modified the definition of ''facility'' in three ways: (1) To clarify that this definition alone governs the applicability of 40 CFR part 112; (2) to clarify that containers can be aggregated or disaggregated (*i.e.*, counted separately), based on various factors in defining the ''facility'' (in other words, the owner or operator has the discretion to identify which contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines make up the facility); and (3) to add the qualifier ''oil'' before the term ''waste treatment.''

EPA maintains that under this provision, the owner or operator defines the boundaries of his facility, except as noted below. A facility may or may not be subject to the SPCC rule depending on how the facility owner or operator aggregates buildings, structures or equipment and associated storage or type of activity. EPA recognizes that this provision clarifies that a facility owner/operator may determine that he is no longer subject to the SPCC requirements. However, an owner or operator may not characterize a facility so as to simply avoid applicability of the rule (for example, defining separate facilities around oil storage containers that are located side-by-side or within close proximity, and are used for the same purpose). See Section V.D of the December 5, 2008 notice at 73 FR 74244 for more information about this amendment.

Comments generally supported the amendments to the definition of ''facility.'' Based on this and review of all relevant facts, the Agency is making no change to this provision.

6. Facility Diagram

In the December 2008 amendments, EPA revised the requirement that the facility diagram include the location and contents of each container to provide additional flexibility. EPA amended § 112.7(a)(3) to clarify that the facility diagram must include all fixed containers (that is, those containers that are not mobile or portable). For any mobile or portable containers (such as drums or totes), a facility owner or operator must mark the storage area on the facility diagram for these containers. For the purposes of this provision, ''storage area'' means the location of their out-of-service containers or designated storage area, primary storage area, or areas where mobile or portable containers are most frequently located. The facility owner or operator may mark the number of containers, contents and capacity of each container either on the facility diagram or in a separate description in the SPCC Plan. If the total number of mobile or portable containers changes, the owner or operator need only include an estimate in the Plan of the number of mobile or portable containers, the anticipated contents, and capacities of the mobile or portable containers maintained at the facility in the Plan.

EPA also required that certain intra-facility piping (*i.e.*, gathering lines) exempted from the SPCC requirements in the December 2008 action be identified on the facility diagram and marked as ''exempt.'' This will help facility and EPA personnel define the jurisdictional boundaries at the facility and provide emergency response personnel with information that can be used to identify hazards during a spill response activity. However, EPA has not required that all containers exempted from the rule be marked on the facility diagram because in many cases, it would be impracticable. For example, the mobility of motive power containers and mobile/portable containers with a capacity of less than 55 U.S. gallons makes them difficult to accurately represent on a facility diagram. See Section V.E of the December 5, 2008 notice at 73 FR 74246 for more information about this amendment.

Comments generally supported the amendments to the facility diagram provision. One commenter claimed that his facility diagrams identify underground storage tanks, but do not label them as exempt from the SPCC requirements. The comment argued that marking them as ''exempt'' would be an unnecessary expense. The requirement to identify exempt USTs was finalized in July 2002 (67 FR 47042, July 17, 2002) and so antedates the December 2008 amendments; thus the comment is outside the scope of this rulemaking. However, in response, we would note that the facility diagram can be supplemented with a table or log that indicates which USTs are exempt from the SPCC requirements. Based on this and review of all relevant facts, the Agency is making no change to this provision.

7. Loading/Unloading Racks

In the December 2008 amendments, EPA finalized a definition for the term ''loading/unloading rack,'' which governs whether a facility's oil transfer equipment and areas are subject to § 112.7(h). Under this provision, the requirements described at § 112.7(h) only apply to oil transfer areas of a regulated facility where a loading/unloading rack, as defined in § 112.2, is located. EPA modified the definition to provide more clarity, and to indicate that a loading/unloading arm is an essential component of a loading/unloading rack. Other components that may be found at a loading or unloading rack are described in the definition. Equipment present at a loading/unloading area where a pipe stand connects to a tank car or tank truck via a flexible hose, which is not equipped with a loading or unloading arm, is not considered a loading/unloading rack as defined by the December 2008 amendments.

EPA also changed all references from loading/unloading ''area'' to loading/unloading ''rack,'' including modifications to the language in § 112.7(h)(1), and corrected the word ''break'' to ''brake'' in § 112.7(h)(2). Finally, EPA clarified that § 112.7(h) applies to a loading/unloading rack associated with a container that is exempted from the rule, such as underground storage tanks (USTs) that are subject to all of the technical requirements of 40 CFR part 280 or a State program approved under part 281. Additionally, EPA clarified that transfer areas (equipped with dispensers or other transfer equipment) that are associated with exempted USTs, at an otherwise regulated SPCC facility, are subject to the requirements of § 112.7(c). See Section V.F of the December 5, 2008 notice at 73 FR 74248 for more information about this amendment.

EPA agrees with the comment that EPA's definition of ''loading/unloading rack'' does not apply to a flexible hose used to load and/or unload oil from a tanker truck or railcar unless the flexible hose is connected to a loading/unloading arm. The Agency does not intend this definition to include areas where loading or unloading is achieved using only flexible hoses. However, the presence of flexible hoses on oil transfer equipment does not always indicate that the equipment is exempt from the definition of loading/unloading rack because some top and bottom loading/unloading racks consist of a combination of steel loading arms connected by flexible hoses.

Comments generally supported the ''loading/unloading rack'' definition and amendments to the requirements for a ''loading/unloading rack.'' Based on this and review of all relevant facts, the Agency is making no change to these provisions.

8. General Secondary Containment

In the December 2008 amendments, EPA amended the general secondary containment requirement at § 112.7(c) in three ways:

- By adding text regarding the method, design and capacity of secondary containment— to make it clear that the scope of the general secondary containment requirements takes into consideration the typical failure mode, and most likely quantity of oil that would be discharged, consistent with EPA guidance (*SPCC Guidance for Regional Inspectors*);
- By specifically referencing both active and passive measures of secondary containment to make it clear that general containment requirements allows for the use of both active and passive secondary containment measures to prevent a discharge to navigable waters or adjoining shorelines. Active containment measures are those that require deployment or other specific action by an operator. These measures may be deployed either before an activity involving the handling of oil starts, or in reaction to a discharge, as long as the active measure is designed to prevent an oil discharge from reaching navigable waters or adjoining shorelines. Passive measures are permanent installations and do not require deployment or action by the owner or operator. The design and capacity flexibility described in paragraph § 112.7(c) is specifically for equipment and containers subject to this paragraph and not for other secondary containment provisions of this rule; and.
- By including the following additional examples of prevention systems for onshore facilities: drip pans, sumps, and collection systems. Drip pans are typically used to isolate and contain small drips or leaks until the source of the leak is repaired. They are commonly used with product dispensing containers (such as drums), when uncoupling hoses after bulk transfer operations, and for pumps, valves, and fittings. Sumps and collection systems generally involve a permanent pit or reservoir connected to troughs/trenches that collect oil. By expanding the list of examples of secondary containment methods/prevention systems found in § 112.7(c)(1), EPA intended to increase the clarity and better represent current prevention practices. EPA emphasizes that the list of containment methods/prevention systems are examples only; other containment methods may be used, consistent with good engineering practice. See Section V.H of the December 5, 2008 notice at 73 FR 74261 for more information about this amendment.

As EPA discussed in the December 5, 2008 amendments, the Plan preparer should include enough detail in the SPCC Plan to describe the efficacy of the measures used to comply with the general secondary containment requirements (*see* the *SPCC Guidance for Regional Inspectors,* Chapter 4). While EPA does not require that calculations be kept in the Plan, it recommends the facility owner or operator maintain them such that if questions arise during the inspection, the calculations which serve as the basis for the capacity of the secondary containment system will be readily available for review.

Comments generally supported the amendments to the general secondary containment requirements. Based on this and review of all relevant facts, the Agency is making no change to these provisions.

9. General Secondary Containment for Non-Transportation-Related Tank Trucks

In the December 2008 amendments, EPA extended the exemption from the sized secondary containment requirements provided to mobile refuelers in the December 2006 amendments (71 FR 77266, December 26, 2006) to non-transportation-related tank trucks at a facility subject to the SPCC rule. Other non-transportation-related tanker trucks may be transferring non-fuel oils (i.e., transformer oils, lubrication oils, or certain AFVOs) and operate similarly to mobile refuelers; therefore, they may not be able to comply with the sized secondary containment requirements. Specifically, EPA amended §§ 112.6(a)(3)(ii), 112.8(c)(2), 112.8(c)(11), 112.12(c)(2), and 112.12(c)(11) to include the phrase ''except mobile refuelers and other non-transportation-related tank trucks.'' Such non-transportation-related tank trucks include those used to store and transport fuel, crude oil, condensate, non-petroleum, or other oils for transfer to or from bulk storage containers; for example, a truck used to refill oil-filled equipment at an electrical substation or a pump truck at an oil production facility. Under this approach, the general secondary containment requirements at § 112.7(c) still apply. *See* Section V.I of the December 5, 2008 notice at 73 FR 74262 for more information about this amendment.

EPA agrees with comments supporting the exemption from the sized secondary containment requirements for non-transportation-related tank trucks at a facility subject to the SPCC rule. One comment noted that the exemption from sized secondary containment should be rescinded, given the use of truck and skid mounted tanks as storage containers at temporary sites and the high risks associated with these tanks. EPA disagrees with the comment. As stated in the preamble to the December 5, 2008 amendments, the Agency concluded that it is generally not practicable to provide sized secondary containment for non-transportation-related tank trucks because they are moving from location to location within a facility. A non-transportation-related tank truck that only operates in a single or fixed location within the facility (*i.e.,* it does not move within the facility for

purposes of transferring oil) is not eligible for this provision and would still be subject to the sized secondary containment requirement. Based on this and review of all relevant facts, the Agency is making no change to this provision.

10. Security

In the December 2008 amendments, EPA amended the facility security requirements at § 112.7(g) to be performance-based and allow an owner or operator of a facility to tailor its security measures to the facility's specific characteristics and location. This provision extended the streamlined security requirements that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the security requirements.

Specifically, EPA modified the security requirements at § 112.7(g) to allow an owner or operator to design the security arrangements at the facility to address the specific circumstances that apply. This provision allows an owner or operator to describe in his SPCC Plan how he will:

- Secure and control access to all oil handling, processing and storage areas;
- Secure master flow and drain valves;
- Prevent unauthorized access to starter controls on oil pumps;
- Secure out-of-service and loading/unloading connections of oil pipelines; and
- Address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges.

A facility owner or operator is required to document in the SPCC Plan how these security measures are implemented. These requirements replace the more prescriptive fencing and other requirements, previously found in § 112.7(g)(1) through (5). Because the revised requirements at § 112.7(g) apply to all facilities (excluding oil production facilities), EPA removed the security requirements previously found at § 112.6(c)(3) for qualified facilities; the provision would be redundant. See Section V.J of the December 5, 2008 notice at 73 FR 74263 for more information about this amendment.

Comments generally supported the amendments to the provision for security requirements. Based on this and review of all relevant facts, the Agency is making no change to this provision.

11. Integrity Testing

In the December 2008 amendments, EPA amended the requirements at §§ 112.8(c)(6) and 112.12(c)(6) to provide flexibility in complying with the bulk storage container integrity testing requirements. Specifically, EPA modified the provision to allow an owner or operator to consult and rely on industry standards to determine the appropriate qualifications for tank inspectors/testing personnel and the type and frequency of integrity testing required for a particular container size and configuration. Thus, EPA extended the streamlined bulk storage container integrity testing requirement that EPA provided to qualified facilities in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006) to all facilities subject to the integrity testing provision.

Specifically, EPA replaced the previous regulatory requirements at §§ 112.8(c)(6) and 112.12(c)(6) with the requirement for a facility owner or operator to:

- Test/inspect each aboveground container for integrity on a regular schedule and whenever material repairs are made.
- Determine, in accordance with industry standards, the appropriate qualifications of personnel performing tests and inspections and the frequency and type of testing and inspections, which take into account container size, configuration, and design.

These revised provisions allow, for example, an owner or operator to adopt visual inspections for certain types of containers, as outlined in industry standards, to satisfy the integrity testing requirements without the need for environmental equivalence determinations certified by a PE. However, EPA notes that certain containers may not fall within the scope of an industry standard or may not have an applicable industry standard; in this case, the owner or operator of the facility may develop an environmentally equivalent inspection and testing program in accordance with § 112.7(a)(2) to comply with the integrity testing requirements described in §§ 112.8(c)(6) and 112.12(c)(6) (for more information, see Chapter 7 of the *SPCC Guidance for Regional Inspectors*). In the case of a Tier II qualified facility, the environmentally equivalent integrity testing program will require PE certification. See § 112.6(b)(3)(i) and 112.6(b)(4) for more information on PE certification of environmental equivalence for Tier II qualified facilities.

An owner or operator is still required to keep comparison records (records of inspections and tests kept under usual and customary business practices will suffice) and to inspect the container's supports and foundations. The owner or operator must also conduct frequent inspection of the outside of the container for signs of deterioration, discharges, or accumulation of oil inside diked areas. Because the revised requirements at §§ 112.8(c)(6) and 112.12(c)(6) apply to all facilities (excluding oil production facilities), EPA removed the integrity testing requirements previously found at § 112.6(c)(4) for qualified facilities. *See* Section V.K of the December 5, 2008 notice at 73 FR 74264 for more information about this amendment.

EPA agrees with the comments supporting the provision for integrity testing requirements. However, several comments generally opposed these amendments, and one comment questioned the need for more flexibility with regard to the integrity testing requirements. EPA recognizes that certain containers do not have applicable industry standards and notes that the rule already provides flexibility to integrity testing in that the owner or operator can rely on a PE to provide an environmentally equivalent method of integrity testing in § 112.7(a)(2). Nonetheless, the December 2008 amendments address broader concerns with the integrity testing requirements by revising the rule text under §§ 112.8(c)(6) and 112.12(c)(6). No new or compelling information or data was provided by comments that supported changing EPA's position. Based on this and review of all relevant facts, the Agency is making no change to this provision.

12. Integrity Testing Requirements for Animal Fats and Vegetable Oils

In the December 2008 amendments, EPA differentiated the integrity testing requirements at § 112.12(c)(6) for an owner or operator of a facility that handles certain types of AFVOs. Specifically, EPA provided the PE or an owner or operator self-certifying an SPCC Plan with the flexibility to use a visual inspection program for integrity testing for containers that store AFVOs and that meet certain criteria identified in § 112.12(c)(6)(ii). This flexibility applies to those bulk storage containers that are subject to the applicable sections of the Food and Drug Administration (FDA) regulation 21 CFR part 110, *Current Good Manufacturing Practice in Manufacturing, Packing or Holding Human Food,* as well as meet the following additional criteria: (1) The

containers are elevated; (2) the containers are made from austenitic stainless steel; (3) the containers have no external insulation; and (4) the containers are shop-built. That is, an owner or operator with containers meeting these criteria can use visual inspection of these containers equivalent to industry standards, in lieu of the revised integrity testing requirements found at § 112.12(c)(6)(i), without having to document the reasons for using an environmentally equivalent measure in accordance with § 112.7(a)(2). The owner or operator is required to document the procedures for inspections and testing in the SPCC Plan, including those for AFVO bulk storage containers that are eligible for the differentiated requirements described in this provision.

EPA does not require that an owner or operator use this alternative compliance option. This alternative provides additional flexibility in meeting the provisions set forth in § 112.12(c)(6) to address stakeholder concerns. EPA recognizes that certain types of containers do not have applicable industry standards. The December 2008 amendments revised the SPCC rule to provide an environmentally equivalent approach to comply with the integrity testing requirements for AFVO containers or have a PE provide an environmentally equivalent method of integrity testing in accordance with § 112.7(a)(2). See Section V.K of the December 5, 2008 notice at 73 FR 74264 for more information about this amendment.

EPA agrees with comments supporting the differentiated integrity testing requirements for an owner or operator of a facility that handles certain types of AFVOs. One comment requested greater flexibility in determining the appropriate integrity testing measures for bulk AFVO storage containers, including an extension of the inspection frequency for tanks storing AFVO. The owner or operator can identify the appropriate integrity testing measures for bulk AFVO storage containers following either § 112.12(c)(6)(i) or § 112.12(c)(6)(ii). Additional flexibility may be achieved when a PE provides an environmentally equivalent method of integrity testing in accordance with § 112.7(a)(2). The SPCC rule requires that inspections of AFVO bulk storage containers be conducted on a regular schedule, but does not otherwise specify an inspection frequency for these containers. The owner or operator can identify the appropriate inspection frequency for the AFVO containers and document the inspection frequency in the SPCC Plan. No new or compelling information or data was provided by comments that would cause the Agency to change its position. Thus, based on this and review of all relevant facts, the Agency is making no change to this provision.

13. Oil Production Facilities

Since its original promulgation in 1973, the SPCC rule has included differentiated requirements for oil production facilities (§ 112.9), as compared to other types of facilities (§§ 112.8, 112.10, 112.11, and 112.12). Based on issues presented by the regulated community, in the December 2008 amendments EPA adopted certain revisions that further streamline, tailor or clarify the SPCC requirements for oil production facilities (see Section V.M of the December 5, 2008 notice at 73 FR 74270). EPA has decided not to modify the following provisions: amended definition of ''production facility''; clarification that drilling and workover activities are not subject to the provisions at § 112.9; exemption from the SPCC requirements for certain intra-facility gathering lines subject to the DOT pipeline regulations in 49 CFR parts 192 or 195; specific requirements for a flowline/intra-facility gathering line maintenance program and an alternative compliance option of contingency planning for flowlines and intra-facility gathering lines at oil production facilities in lieu of secondary containment requirements; an alternative compliance option for flow-through process vessels at oil production facilities that requires general secondary containment and additional oil spill prevention measures in lieu of the sized secondary containment requirements; definition of ''produced water container'' and alternative compliance measures for these containers which requires general secondary containment, a process or procedure certified by a PE designed to remove free-phase oil on the surface of the produced water container and compliance with additional oil spill prevention measures in lieu of sized secondary containment requirements; and clarification of the definition of ''permanently closed'' as it applies to an oil production facility.

a. Definition of Production Facility

Consistent with the revisions to the definition of ''facility'' (as described in Section V.D of the December 2008 amendments (73 FR 74236)), EPA also modified the definition of ''production facility.'' A ''production facility'' is a type of ''facility'' as defined in § 112.2. With the December 2008 amendments, EPA added a sentence at the end of the definition to clarify that while only the definition of ''facility'' governs the overall applicability of 40 CFR part 112, the definition of ''production facility'' is used to determine which sections of the rule may apply at a particular facility. (The sections for administrative and general rule requirements continue to apply at all facilities under 40 CFR part 112.) This change to the definition of production facility addresses concerns raised during litigation challenging the July 2002 rule amendments and discussed in the May 25, 2004 **Federal Register** notice (69 FR 29728). EPA also modified the phrase ''and located in a single geographical oil or gas field operated by a single operator'' to clarify that a production facility ''is located in an oil or gas field.'' This is consistent with the revisions to the definition of ''facility'' that emphasize the flexibility in how a facility owner or operator can determine the boundaries of a facility. See Section V.M.1 of the December 5, 2008 notice at 73 FR 74270 for more information about this amendment.

EPA agrees with comments supporting the revisions to the definition of ''production facility.'' One comment, however, suggested that the Agency refer specifically to petroleum oil in the definition, to clarify that the term does not apply to vegetable oil production facilities. EPA disagrees with the comment; the addition of the term ''petroleum'' is unnecessary because the definition itself makes clear that the type of facilities addressed under ''production facility'' are those involved with petroleum crude oil production and not any other type of oil production, such as AFVO production. EPA's intent has always been that the definition of production facility addresses petroleum crude oil production, extraction, recovery, lifting, stabilization, separation or treatment and associated storage or measurement. For example, the definition includes terms associated with petroleum crude oil production, such as gathering lines and flowlines, which are associated with upstream petroleum crude oil/gas production, not AFVO production or processing facilities. Furthermore, the definition specifies that certain structures, piping, or equipment be located in an oil or gas field. The term ''oil or gas field'' is used exclusively in upstream crude oil and gas production, not in AFVO production; therefore the definition of production facility does not apply to AFVO production facilities.

Based on this and review of all relevant facts, the Agency is making no change to this provision.

b. Modifications to § 112.9 for Drilling and Workover Facilities

To clarify that drilling and workover activities are not subject to the provisions at § 112.9, in the December 2008 amendments, EPA revised the title of § 112.9 to read ''Spill Prevention, Control, and Countermeasure Plan requirements for onshore oil production facilities (excluding drilling and workover facilities).'' EPA also amended the introductory sentence of the section accordingly. *See* Section V.M.2 of the December 5, 2008 notice at 73 FR 74272 for more information about this amendment.

Comments generally supported the amendments to § 112.9 for drilling and workover facilities. Based on this and review of all relevant facts, the Agency is making no change to this provision.

c. Exemption for Certain Intra-Facility Gathering Lines

In the December 2008 amendments, EPA provided an exemption for intra-facility gathering lines subject to DOT requirements at 49 CFR parts 192 (*Transportation of Natural and Other Gas by Pipeline*) or 195 (*Transportation of Hazardous Liquids by Pipeline*). EPA recognizes that the DOT requirements for pipelines may be similar in scope to the SPCC regulations, so that compliance with certain DOT requirements is considered environmentally equivalent to certain SPCC requirements. For example, DOT has the statutory authority over onshore gas or hazardous liquid gathering lines in a non-rural area, as well as ''regulated rural gathering lines'' (including certain gathering lines in or within one-quarter mile of environmentally sensitive rural areas, defined as ''unusually sensitive areas''), and certain low-stress pipelines transporting hazardous liquids. While many gathering lines are under DOT's statutory authority, only a subset of them is subject to the DOT regulatory requirements.

EPA recognizes that gathering lines can be outside the Agency's jurisdiction because they ''transport'' oil outside of an oil production facility. EPA has jurisdiction over non-transportation-related facilities, which includes pipelines used to move oil within a facility. Any inter-facility pipeline, including a gathering line, that transports oil between facilities or from a facility to a vessel, or from a facility to a transportation-related pipeline facility, such as a transmission line, or a pipeline breakout tank, when used for this purpose, is considered transportation-related and is therefore outside EPA's jurisdiction and not subject to the SPCC rule. However, the definition of ''facility,'' as it applies to the SPCC rule is flexible. Depending upon how an owner/operator defines his facility under the SPCC rule, an oil production facility may also include intra-facility gathering lines.

While gathering lines within the SPCC facility boundaries are intra-facility piping, EPA maintained the term intra-facility gathering lines because it is a term that is well recognized within the production sector. For those intra-facility gathering lines that are regulated by DOT under 49 CFR part 192 or 195, EPA exempted them from the SPCC requirements. In other words, the exemption is for intra-facility gathering lines present at a facility where the piping otherwise is subject to both EPA and DOT jurisdiction and regulations. EPA's focus with the SPCC rule is the regulation of oil storage and handling at facilities engaged in activities related to drilling, producing, gathering, processing, refining, storing, transferring, distributing and using oil, while DOT's focus is to regulate transportation-related pipelines. Although EPA has jurisdiction over these lines, EPA has concluded that it is appropriate to defer to DOT's regulations, when applicable to intra-facility gathering lines, in lieu of EPA's requirements. At the same time, the Regional Administrator has the option under § 112.1(f) to require owners and operators of facilities, including those with exempt intra-facility gathering lines, to prepare and implement an SPCC Plan or any applicable part, if a determination is made that it is necessary to prevent a discharge of oil into navigable waters or adjoining shorelines.

Only intra-facility gathering lines that are subject to these DOT regulations are eligible for the exemption. Intra-facility gathering lines located at a facility that are not subject to the regulatory requirements at 49 CFR parts 192 or 195 remain subject to the requirements at 40 CFR part 112. Other non-transportation-related equipment and piping at an oil production facility (such as flowlines), remain subject to the SPCC requirements. In addition, this exemption requires that owners or operators of a facility identify and mark as ''exempt'' on the facility diagram the location of exempt piping. This requirement will assist facility and EPA personnel in defining the boundaries of EPA and DOT jurisdiction and provide response personnel with information used to identify potential hazards during a spill response activity. See Section V.M.4.a of the December 5, 2008 notice at 73 FR 74273 for more information about this amendment.

Comments generally supported the exemption for intra-facility gathering lines subject to the regulatory requirements at 49 CFR parts 192 or 195. Based on this and review of all relevant facts, the Agency is making no change to this provision.

d. Flowlines and Intra-Facility Gathering Lines

EPA is making no changes to the following provisions related to flowlines and intra-facility gathering lines.

(i) Compliance Alternative in Lieu of Secondary Containment for Flowlines and Intra-Facility Gathering Lines

EPA has determined that secondary containment is, in most cases, impracticable for flowlines and intra-facility gathering lines. Therefore, in the December 2008 amendments, the Agency revised § 112.7(c) to provide an optional compliance alternative consisting of contingency planning and a written commitment of manpower, equipment, and materials in lieu of the general secondary containment requirements for flowlines and intra-facility gathering lines that are subject to the SPCC regulation. The Agency tailored the requirements in an effort to provide additional compliance options and enhance environmental protection. *See* Section V.M.4.b of the December 5, 2008 notice at 73 FR 74274 for more information about this amendment.

EPA agrees with comments supporting the provision of an alternative option to the secondary containment requirements for flowlines and intra-facility gathering lines at an oil production facility. A few comments specifically opposed any reduction in secondary containment requirements, but no new or compelling information or data was provided by comments that supported revising the requirements. While EPA understands that flowlines and intra-facility gathering lines are typically a source of discharges, secondary containment is often impracticable. In the December 2008 amendments, EPA provided an alternative compliance option to secondary containment which combines the development of a contingency plan and a written commitment of manpower, equipment, and materials to respond to discharges from flowlines and intra-facility gathering lines. In addition, EPA has also established requirements to add specificity to the flowline and intra-facility gathering line maintenance program. Finally, if this method of spill prevention does not accomplish the goal of protecting

navigable waters or adjoining shorelines, under § 112.1(f) the RA may request that the facility amend the SPCC Plan and provide secondary containment for this piping.

Based on this and review of all relevant facts, the Agency is making no change to this provision.

(ii) Contingency Plan for Flowlines and Intra-Facility Gathering Lines

In the December 2008 amendments, EPA revised §§ 112.7(c) and 112.9(d)(3) to provide a compliance alternative to the general secondary containment requirements under § 112.7(c) for flowlines and intra-facility gathering lines at an oil production facility. Specifically, in lieu of general secondary containment, a facility owner or operator may opt to develop and implement an oil spill contingency plan in accordance with 40 CFR part 109 (Criteria for State, Local and Regional Oil Removal Contingency Plans) and prepare a written commitment of manpower, equipment, and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful, without having to make an impracticability determination for each piece of piping. The Agency amended this provision in an effort to provide additional compliance options and enhance environmental protection. The use of a contingency plan does not relieve the owner or operator of liability associated with an oil discharge to navigable waters or adjoining shorelines that violates the provisions of Section 311(b)(3) of the CWA, 33 U.S.C. 1321(b)(3). EPA also amended § 112.7(a) to make it clear that the contingency plan provisions under § 112.9(d)(3) are not subject to the environmental equivalence provision. See Section V.M.4.c of the December 5, 2008 notice at 73 FR 74275 for more information about this amendment.

EPA agrees with comments supporting the provision to require an oil spill contingency plan in lieu of general secondary containment. However, one comment suggested that a contingency plan should not be used in lieu of secondary containment, because the purpose of the SPCC rule is to prevent spills, not to clean them up after they occur. While EPA understands that although these lines can be the source of discharges, the Agency also recognizes that secondary containment is often impracticable. EPA has provided an alternative compliance option to secondary containment which combines the development of a contingency plan and a written commitment of manpower, equipment, and materials to respond to discharges. In addition, EPA has also established requirements to add specificity to the flowline and intra-facility gathering line maintenance program. These additional measures are intended to enhance the primary integrity of the flowlines and intra-facility gathering lines to prevent the discharges of oil in the first place, and thus, EPA is not solely relying on a contingency plan. Finally, if this method of spill prevention does not accomplish the goal of protecting navigable waters or adjoining shorelines, then under § 112.1(f), the RA has the authority to request that the facility amend the SPCC Plan and provide secondary containment for this piping.

Another comment suggested that the burden for this alternative option is excessive. EPA disagrees. First, as already noted, this alternative provision for flowlines and intra-facility gathering lines is optional; some facilities may choose to provide secondary containment for these lines. Flowlines and intra-facility gathering lines can be a source of discharges and when secondary containment is not provided then it is appropriate for the facility to have a contingency plan and a written commitment of manpower, equipment, and materials in place to respond to these discharges. Additionally, by removing the need to determine impracticability, the Agency has reduced the burden to allow for contingency planning for these flowlines and intra-facility gathering lines. Therefore, EPA has concluded that the requirements are not excessive. Furthermore, by removing the requirement that a PE make the determination of impracticability (§ 112.7(d)), the cost of preparing a contingency plan should decrease.

Another comment suggested that in lieu of the secondary containment requirements for flowlines and intra-facility gathering lines, EPA should require annual physical inspections of the lines and installation of isolation valves on the ends of lines. EPA agrees that some form of enhanced inspection program is appropriate to assure the primary integrity of the flowlines and intra-facility gathering lines and to implement a contingency plan. However, EPA has concluded that inspection frequency is a site-specific determination and setting a prescriptive (''one-size fits all'') timeframe is inappropriate. Although the Agency agrees that the installation of isolation valves may be appropriate in some cases, it did not include this as a requirement because it may be impracticable for some oil production facilities. However, an owner or operator may choose to install isolation valves as an environmentally equivalent measure to comply with the flowline/intra-facility gathering line maintenance requirements in accordance with § 112.7(a)(2).

No new or compelling information or data was provided by comments that support modification of the provision. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(iii) Requirements for a Flowline and Intra-Facility Gathering Line Maintenance Program

In the December 2008 amendments, EPA revised the requirement for an owner or operator to prepare and implement a written flowline and intra-facility gathering line maintenance program under § 112.9(d)(4) to add specificity to the existing provision. This provision specifies that the requirements apply to non-transportation-related intra-facility gathering lines, as well as to flowlines at an oil production facility. Intra-facility gathering lines pose the same potential for discharge as flowlines. EPA never intended to regulate the two types of piping differently. In response to industry concerns, EPA has established requirements to add specificity to the existing flowline/intra-facility gathering line maintenance program provision, because there are no industry standards for maintenance of this equipment. The Agency believes that an effective flowline maintenance program is necessary to detect a discharge in a timely manner so that the oil discharge response operations described in the contingency plan may be implemented effectively. Additionally, eliminating the requirement for secondary containment necessitates more prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe itself. Finally, EPA believes that it is appropriate to establish a minimum set of requirements for a flowline and intra-facility gathering line maintenance program in order to facilitate consistent compliance. Under the amended provisions, a maintenance program must address procedures to:

- Ensure that such flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment.
- Visually inspect and/or test flowlines and intra-facility gathering lines and associated appurtenances on a

periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b). The frequency and type of testing must allow for the implementation of a contingency plan, as described under part 109 of this chapter, if there is no secondary containment.

• Take corrective action or make repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.

• Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances.

The Agency concludes that if the requirement for general secondary containment for these lines is eliminated, then some minimal prescriptive requirements for discharge prevention to ensure the integrity of the primary containment of the pipe itself are appropriate. However, the facility owner or operator may deviate from the flowline and intra-facility gathering line maintenance program requirements if an environmentally equivalent alternative measure is implemented in accordance with § 112.7(a)(2). EPA recognizes that other Federal or State requirements may be environmentally equivalent to certain SPCC requirements, including the flowline and intra-facility gathering line maintenance program requirement. An environmental equivalence determination is subject to review and certification by a PE. An effective flowline and intra-facility gathering line maintenance program includes timely detection of an oil discharge so that response operations described in the contingency plan may be implemented effectively. *See* Section V.M.4.d of the December 5, 2008 notice at 73 FR 74276 for more information about this amendment.

A comment suggested that the amended requirements for a flowline and intra-facility gathering line maintenance program are excessive. The Agency disagrees. As noted previously, if the requirement for general secondary containment is eliminated, then some minimal requirements that add specificity to the flowline and intra-facility gathering line maintenance program are appropriate, particularly since there are no industry standards for the maintenance of flowlines and intra-facility gathering lines. To the extent that an owner and operator of a facility cannot comply with this provision, he can deviate from these requirements if an environmentally equivalent alternative is implemented in accordance with § 112.7(a)(2). No new or compelling information or data was provided in comments that would cause the Agency to change its position. Based on this and review of all relevant facts, the Agency is making no change to this provision.

e. Flow-Through Process Vessels

EPA is making no changes to the following provisions related to flow-through process vessels.

(i) Exemption From Sized Secondary Containment for Flow-Through Process Vessels

Flow-through process vessels, such as horizontal or vertical separation vessels (for example, a heater-treater, free-water knockout, gun-barrel, *etc.*) have the primary purpose of separating the oil from other fractions (water and/or gas) and sending the separated fluid streams to the appropriate container. In the December 2008 amendments, EPA revised the requirements in § 112.9(c)(2) to remove the requirement to provide sized secondary containment for flow-through process vessels at oil production facilities without making an impracticability determination, and to allow the facility owner or operator the option to comply with the alternate requirements in § 112.9(c)(5) instead (see Section ii, below).

EPA agrees with concerns regarding the impracticability of providing sized secondary containment around certain flow-through process vessels at production facilities. EPA also recognizes that similar flow-through process equipment at non-production facilities are not subject to the more stringent sized secondary containment and inspection requirements for bulk storage containers; only the general secondary containment requirements at § 112.7(c) apply. However, due to the unattended (and in some cases remote) nature of oil production operations, EPA concluded that it was appropriate to require additional measures in lieu of sized secondary containment for this equipment. Thus, in the December 2008 amendments, EPA provided an alternative compliance option to address these concerns.

It is important to note that although the Agency provided an option that allows the owner and operator to not provide sized secondary containment for flow-through process vessels at oil production facilities, the general secondary containment requirement of § 112.7(c) still applies to these vessels. *See* Section V.M.5.a of the December 5, 2008 notice at 73 FR 74277 for more information about this amendment.

EPA agrees with comments supporting the provision to exempt flow-through process vessels from the sized secondary containment requirement. However, two comments suggested that any exemption from the secondary containment requirement for flow-through process vessels would cause a greater risk for discharges of harmful quantities of oil to reach navigable waters or adjoining shorelines. EPA agrees that some form of secondary containment is required for these vessels. EPA also agrees that sized secondary containment is generally preferable to general secondary containment because these flow-through process vessels operate at unattended facilities and often at remote locations. However, there are instances where providing such sized secondary containment is not always practicable. To address this concern, EPA provided the owner or operator with a choice to comply with either the sized secondary containment requirements, or the general secondary containment requirements along with additional measures for inspection and corrective action. These compliance options allow the owner or operator to tailor the SPCC Plan to meet the facility's operational needs while maintaining environmental protection.

No new or compelling information or data was provided in comments that supported modification of the provision. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(ii) Additional Requirements in Lieu of Sized Secondary Containment for Flow-Through Process Vessels

Oil production facilities are generally unattended. EPA recognizes that process equipment at other types of facilities is typically attended during hours of operation and there is a greater potential to immediately discover and correct a discharge. Therefore, in the December 2008 amendments, EPA required additional measures for flow-through process vessels at oil production facilities that do not have sized secondary containment. EPA provided requirements in § 112.9(c)(5) that include the following: Periodic inspection and/or testing for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b); corrective action or repairs to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and prompt removal or initiation of

actions to stabilize and remediate any accumulations of oil discharges associated with flow-through process vessels. *See* Section V.M.5.b of the December 5, 2008 notice at 73 FR 74278 for more information about this amendment.

Comments generally supported the additional requirements in lieu of sized secondary containment for flow-through process vessels. One comment, however, suggested that the risk of discharge from flow-through process vessels is so low that there should be no additional requirements. EPA disagrees with the comment because flow-through process vessels contain oil and therefore pose a potential threat of a discharge (*e.g.,* failure of a dump valve). Additionally, this alternative compliance option removes the sized secondary containment specification for flow-through process vessels that are located at unmanned facilities, which are often remotely located, and constantly operating. Therefore, EPA has established alternative prevention measures along with the general secondary containment requirement in order to maintain environmental protection. However, the Agency provided the owner or operator with a choice to comply with either the sized secondary containment requirements, or the general secondary containment requirements along with the additional measures for inspection and corrective action. Based on this and review of all relevant facts, the Agency is making no change to this provision.

(iii) Reportable Discharge From Flow-Through Process Vessels

In the December 2008 amendments, EPA finalized a provision to require that if an oil production facility owner or operator has a discharge as described in § 112.9(c)(5)(iv) from a flow-through process vessel, then he must ensure that all flow-through process vessels using general secondary containment comply with the sized secondary containment requirements of § 112.9(c)(2) and periodic inspection requirements of paragraph (c)(3) within six months of the discharge discovery. A discharge, as described in § 112.9(c)(5)(iv), is either a single discharge of more than 1,000 U.S. gallons of oil or two discharges within any twelve month period, each of more than 42 U.S. gallons of oil. The amount of oil specified in this criterion refers to the amount of the discharge that actually reaches navigable waters or adjoining shorelines, not the total amount of the discharge released from the container. Owners and operators do not need to include the amount of oil discharges that are the result of natural disasters, acts of war, or terrorism when evaluating this criterion. *See* Section V.M.5.c of the December 5, 2008 notice at 73 FR 74279 for more information about this amendment.

No comments specific to reportable discharges from flow-through process vessels were received in the 2009 comment period. Based on this and review of all relevant facts, the Agency is making no change to this provision.

f. Alternative Compliance Measures for Produced Water Containers

Produced water containers are typically located within a tank battery at an oil production facility where they are used to store well fluids that result after marketable crude oil is separated from the fluids extracted from the reservoir and prior to disposal, subsequent use (*e.g.,* re-injection or beneficial reuse), or further treatment. Under normal operating conditions, a layer of oil may be present on top of the fluids in these produced water containers. The amount of oil by volume observed in produced water containers varies, but based on EPA's understanding, is generally estimated to range from less than one to up to ten percent, and can be greater. These produced water containers are typically at the end of the oil treatment process and often accumulate emulsified oil not captured in the separation process.[4]

In the December 5, 2008 SPCC rule amendments, EPA adopted two alternatives for produced water containers at oil production facilities. Under the first alternative, EPA exempted produced water containers at oil production facilities from the requirements of the SPCC rule if a PE certified, as part of the SPCC Plan, that the contents of a produced water container, if completely discharged, would not contain oil in amounts that may be harmful (as described in 40 CFR part 110) based on the efficiency of the oil/water separation technology used. Under this alternative, the capacity of the exempted containers would not count towards the facility aggregate oil storage capacity. EPA is removing this exemption. See the discussion in section V.C.3 of this notice.

For those produced water containers that were not eligible for the exemption, the facility owner/operator could comply with the general secondary containment requirements in lieu of sized secondary containment and conduct visual inspections, maintenance and corrective action, if a PE described in the SPCC Plan and certified that a practice was established that was designed to remove the amount of free-phase oil from the produced water container on a scheduled and routine basis. These containers would count toward the aggregate oil storage capacity. If the production facility had certain types of oil discharges or failed to meet the requirements of this part of the rule, the facility would no longer be eligible for the exemption or the streamlined requirements. EPA also promulgated a definition of produced water container to clarify which containers were eligible for these rule provisions.

In this action, EPA is not making any changes to the definition of produced water container in § 112.2 or the alternative compliance measures for produced water containers in lieu of sized secondary containment as finalized in the December 5, 2008 notice. The alternative measures to sized secondary containment requirements and inspections under § 112.9(c)(2) and (c)(3) for produced water containers include: compliance with general secondary containment requirements; implementation of a procedure or process to remove free-phase oil (*e.g.,* skimming program) as certified by a PE; visual inspection; corrective action or repairs to the container; and prompt removal or remediation of oil discharges.

EPA acknowledges comments that expressed general support for, as well as opposition to, the alternatives for produced water containers finalized in the December 2008 notice (73 FR 74236, December 5, 2008). Good general secondary containment practices can be successfully implemented in lieu of sized secondary containment, if such practices are designed by a PE in consideration of site-specific factors and in combination with additional oil spill prevention practices including inspections, procedures to minimize the amount of free-phase oil in the container, and procedures to remove/remediate discharged oil. The Agency acknowledges that skimming operations at produced water containers may operate similarly to separation operations at flow-through process vessels when free phase oil is being removed or recovered from them on a regular basis. Therefore, including the additional compliance measures for produced water containers with procedures to minimize the amount of

[4] *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015; and Supplemental DOE Information Relating to Oil and Gas Industry Relief from Some SPCC Requirements, found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0175.

free-phase oil, including remediation and inspections, is appropriate and consistent with alternative compliance options provided for other bulk storage containers (*i.e.,* flow-through process vessels) which separate oil and water mixtures. As with flow-through process vessels at oil production facilities, EPA remains concerned that these produced water containers are typically located at unattended, often remote facilities, and therefore has retained the additional provisions for maintenance, inspection, and remediation to maintain environmental protection. The Agency agrees with comments that expressed concern regarding the threat of discharges from produced water containers. Oil may be present not only in free phase, but also in other forms, such as in a dissolved phase, emulsion or sludge at the bottom of the produced water container. EPA is addressing these concerns by retaining the additional spill prevention measures in addition to general secondary containment for these containers.

A comment noted that it is common practice to locate produced water bulk storage containers with other bulk storage containers in the tank battery surrounded by sized secondary containment. EPA agrees that some oil production facilities already provide sized secondary containment around their bulk storage containers, including around their produced water containers. Engineered secondary containment measures, such as dikes or berms, are particularly appropriate for oil production facilities (including produced water containers) since these facilities can be remotely located and are often unattended, and thus there may be delays in detecting and mitigating an oil spill. In fact, the data referenced in comments show that a number of spills from produced water containers were specifically contained by a sized secondary containment berm or other man-made structure which prevented the migration of the fluids offsite and to waters. Therefore, the alternative measures for produced water containers under § 112.9(c)(6) are optional. An owner or operator may choose to comply with the sized secondary containment requirements in § 112.9(c)(2) along with the inspection requirements in § 112.9(c)(3). However, because the alternative removal procedure is essential for reducing the amount of free-phase oil in the produced water container, if it is not implemented as described in the Plan or no records are maintained, then the owner/operator must comply with § 112.9(c)(2) and (c)(3).

Additionally, if the facility experiences a discharge of more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b), occurring within any twelve month period (excluding discharges that are the result of natural disasters, acts of war, or terrorism) from a produced water container, then the facility owner or operator may no longer take advantage of this alternative option and must comply with the sized secondary containment requirements at § 112.9(c)(2) and the inspection requirements at § 112.9(c)(3) within six months. Section 112.9(c)(6)(v) has been retained to provide this requirement. As stated in the December 2008 amendments, a produced water container must already comply with § 112.9(c)(1) and § 112.9(c)(4) and therefore these requirements were not added to § 112.9(c)(6)(v). *See* Section V.M.7.b of the December 5, 2008 notice at 73 FR 74287 for more information about this amendment.

Based on this and review of all relevant facts, the Agency is making no change to this provision or to the definition of produced water container.

g. Clarification of the Definition of Permanently Closed Containers

In the preamble to the December 2008 amendments, the Agency addressed concerns expressed by the regulated community over the requirements for permanently closing a container, as described in the definition of ''permanently closed'' at § 112.2. There, EPA clarified that the permanent closure requirements under the SPCC rule are separate and distinct from the closure requirements in regulations promulgated under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Consequently, an oil production facility does not have to undergo the expense of permanent closure under 40 CFR part 264 or 265 of RCRA, because the drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil are not subject to those regulations. *See* Section V.M.8 of the December 5, 2008 notice at 73 FR 74290 for the full text of this preamble clarification.

No comments were received in the 2009 comment period addressing the clarifying language and therefore, EPA maintains its position on this clarification.

14. Man-Made Structures

In the preamble to the December 2008 amendments, EPA clarified that, consistent with statements made in the preamble to a 1976 amendment to the SPCC rule (41 FR 34164, December 11, 1976), manmade features, such as drainage control structures and dikes, cannot be used to conclude that there is no reasonable expectation that a discharge from the facility will reach navigable waters or adjoining shorelines. That is, if there is a reasonable expectation that a discharge from the facility would reach navigable waters or adjoining shorelines in the absence of such containment or other structures, the facility is subject to the SPCC requirements. However, EPA noted that it may be appropriate for a facility owner or operator to consider man-made structures (for example, dikes, equipment, buildings, basements or other containment structures) to determine how to comply with the SPCC rule. *See* Section V.N of the December 5, 2008 notice at 73 FR 74292 for the full text of this preamble clarification.

EPA agrees with the comment that generally supported the clarifications on man-made structures. Based on this and review of all relevant facts, the Agency is making no change to this clarification.

15. Wind Turbines

In the preamble to the December 2008 amendments, EPA clarified that wind turbines meet the definition of oil-filled operational equipment adopted in the December 2006 SPCC rule amendments (71 FR 77266, December 26, 2006). Thus, the alternative compliance option provided for this type of equipment in § 112.7(k) is available for wind turbines, to the extent that the wind turbines meet the oil storage capacity threshold in the rule. The amendments to the SPCC rule promulgated in December 2006 allow owners and operators of facilities with qualified oil-filled operational equipment the option of preparing an oil spill contingency plan and a written commitment of manpower, equipment, and materials to expeditiously control and remove any oil discharged that may be harmful without having to make an individual impracticability determination as required in § 112.7(d). If an owner or operator chooses this option, he is also required to establish and document an inspection or monitoring program for this qualified oil-filled operational equipment to detect equipment failure and/or a discharge in lieu of providing secondary containment. *See* Section V.P of the December 5, 2008 notice at 73 FR 74294 for the full text of this preamble clarification.

No comments were received in the 2009 comment period on the

clarification and therefore, EPA maintains its position.

16. Technical Corrections

In the December 2008 amendments, EPA corrected the text of the introductory paragraph of § 112.3 to move the phrase ''in writing'' after ''must prepare'' and then insert the phrase ''and implement'' after the phrase ''in writing,'' in order to make it explicit that a facility owner or operator must prepare and implement an SPCC Plan.

EPA also amended the introductory paragraph of § 112.12 to delete the phrase ''(excluding a production facility).'' This amendment corrected an inadvertent omission when EPA removed several sections in Subpart C of 40 CFR part 112 that were inappropriate for AFVOs in the December 2006 amendments to the SPCC rule (71 FR 77266, December 26, 2006).

Finally, the Agency amended the regulation to include ''U.S.'' before gallons in several places, to indicate that the Agency means the U.S. gallon unit of measure and not the Imperial unit of measure. *See* Section V.Q of the December 5, 2008 notice at 73 FR 74294 for more information about these technical corrections.

Comments generally supported the technical corrections. Based on this and review of all relevant facts, the Agency is making no change to these provisions.

B. Technical Corrections to Provisions of the December 2008 Amendments

EPA is correcting the text of several of the provisions promulgated on December 5, 2008. These corrections further clarify or update the provisions of the December 2008 amendments without making substantive changes to the regulatory requirements.

1. Tier I Qualified Facilities and Appendix G Plan Template

As required in the December 2008 amendments, a Tier I qualified facility must meet all of the eligibility criteria for qualified facilities promulgated by EPA in December 2006 (71 FR 77266, December 26, 2006), as well as not have any aboveground oil storage container with a capacity greater than 5,000 U.S. gallons. EPA developed this individual container capacity criterion in order to link any streamlined requirements with a reduced potential for oil discharge. The selection of the maximum individual aboveground container capacity threshold of 5,000 U.S. gallons is consistent with the applicable industry consensus standard that calls for varying levels of inspection requirements based on container size and configuration.

EPA designated qualified facilities that have an individual aboveground oil storage container with a capacity greater than 5,000 U.S. gallons as Tier II qualified facilities. Although the organization of the regulatory text in § 112.6 was modified to accommodate the tiered approach, the requirements for Tier II qualified facilities remained the same as promulgated on December 26, 2006 (71 FR 77266).

The December 2008 amendments eliminated and/or modified several SPCC requirements for Tier I qualified facilities. For example, the facility diagram requirements (§ 112.7(a)(3)) and certain provisions that generally do not apply to facilities that store or handle smaller volumes of oil, such as requirements for transfers at loading racks (§ 112.7(h)) were removed. The list of applicable rule provisions for Tier I qualified facilities is included in § 112.6(a)(3).

The Tier I self-certification requirement is similar in scope to that required for an owner or operator of a Tier II qualified facility who chooses to self-certify an SPCC Plan (as promulgated in December 2006, 71 FR 77266). Consistent with the current requirement for qualified facilities, the owner or operator of a Tier I qualified facility is also allowed to self-certify any technical amendments to the Plan under § 112.6(a)(2), and document this certification in the Plan template (or some other equivalent Plan).

The December 2008 amendments provided the owner or operator of a Tier I qualified facility with the option to complete a self-certified SPCC Plan template (found in Appendix G to 40 CFR part 112) in lieu of a full SPCC Plan. The owner or operator can complete the SPCC Plan template, which is comprised of a set of streamlined SPCC rule requirements, and implement those streamlined requirements, to comply with the SPCC regulation. The SPCC Plan template for Tier I qualified facilities is intended to facilitate the development of SPCC Plans at Tier I qualified facilities. Once completed and certified by the owner or operator, the Plan template serves as the SPCC Plan for the facility. As for any facility subject to the SPCC rule, the owner or operator must maintain a written copy of the Plan—which in this case would be the completed and self-certified SPCC Plan template—at the facility or at the nearest field office if the facility is attended less than four hours per day (§ 112.3(e)(1)).

The Agency emphasizes that use of the Plan template approach is optional. An owner or operator of a Tier I qualified facility can choose to prepare and implement either a full PE-certified SPCC Plan or a self-certified SPCC Plan following all of the requirements of § 112.6(b) (for a Tier II qualified facility) in order to comply with the requirements under 40 CFR part 112. *See* Section V.G of the December 5, 2008 notice at 73 FR 74256 for more information about these technical corrections.

EPA is now further clarifying the earlier amendments, as well as correcting typographical and formatting errors in the following sections of the Appendix G SPCC Plan Template:

- Introduction—in the second sentence, the term ''meet'' was replaced by ''addresses'' for clarity; and a sentence was added to clarify that an owner or operator should follow State and local requirements (such as for permitting, design and construction) and obtain professional assistance, as appropriate;
- Section I, Self-Certification Statement (§ 112.6(a)(1))—points 3c and 3d are combined and edited for increased clarity. The phrase ''By completing this Plan template'' was removed because this text is unnecessary; with this revision, EPA clarifies that completing the template represents the preparation of a Plan, but not its implementation.
- Section II, Record of Plan Review and Amendments. In the Five Year Review (§ 112.5(b)) paragraph, EPA inserted the term ''SPCC Plan'' for clarity.
- Table G–2 Oil Storage Containers and Capacities—In the footnote to the table, EPA inserted the word applicability to the phrase ''qualified facility applicability threshold'' for clarity.
- Table G–3 Secondary Containment and Oil Spill Control—EPA added the phrase ''cleanup occurs'' which was unintentionally not printed in the Federal Register notice for the December 2008 amendments;
- Table G–5 Inspections, Testing, Recordkeeping and Personnel Training—EPA added the word ''bulk'' to clarify that this provision only applies to aboveground bulk storage containers; added citations that were inadvertently omitted; corrected typographical errors; and removed an unnecessary blank row;
- Section A, Onshore Facilities (excluding production) (112.8(b) through (d). 112.12(b) through (d)). The title of this section was amended to correct a typographical error.
- Table G–10 General Rule Requirements for Onshore Facilities—

EPA added the requirement for manual activation of pumps or ejectors and inspection of accumulations prior to discharge, a rule requirement that was unintentionally omitted from this Table; fixed typographical errors; added the word ''bulk'' to clarify that certain provisions only apply to aboveground bulk storage containers; and defined the table border;

- Table G–11 General Rule Requirements for Onshore Oil Production Facilities—EPA defined the table border;
- Table G–15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§ 109.5)—EPA removed inappropriate checkboxes and reformatted the table to be consistent with the other tables in Appendix G; and
- Table G–20 Information provided to the National Response Center in the Event of a Discharge—EPA deleted an unnecessary blank row.

Additionally, EPA is providing technical corrections in § 112.6 and Appendix G to amend the self-certification requirements that refer to produced water containers, as discussed further in Section A.13.f and C.3 of this notice. EPA is also adding extra space in many of the tables and formatting them so that each table begins on a new page.

EPA's amendments to the SPCC rule will have no effect on whether a facility owner or operator must use a PE to meet the State or local requirements, because the SPCC rule does not pre-empt any State or local requirements. In States where the engineer licensing boards have prohibited SPCC Plan self-certification, the owner or operator must have a PE certify the Plan. Although this may limit the relief for Tier II qualified facilities, the owner/operator can develop and certify a Tier I qualified facility Plan to comply with the SPCC rule and have a PE certify the SPCC Plan to meet the state requirements.

2. Underground Emergency Diesel Generator Tanks at Nuclear Power Stations

In the December 2008 amendments, EPA exempted from SPCC applicability underground oil storage tanks deferred from regulation under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at nuclear power generation facilities licensed by the Nuclear Regulatory Commission (NRC) and that meet the NRC design criteria and quality assurance criteria. EPA amended § 112.1(d)(2)(i) and § 112.1(d)(4) to include an exemption applicable to both tanks that are completely buried and tanks that are below-grade and vaulted. Under NRC regulations, a nuclear power generation facility must meet certain design criteria to ensure that the plant will be operated in a manner protective of the public's health and safety, including a requirement to provide redundant standby power systems (see 10 CFR part 50, Appendix A). These NRC design criteria cover the design, fabrication, installation, testing and operation of structures, systems and components important to safety. NRC Regulatory Guide 1.137 describes an acceptable method to comply with NRC requirements regarding fuel oil systems for standby diesel generators and assurance of adequate fuel-oil quality. *See* Section V. O. of the December 5, 2008 notice at 73 FR 74293 for more information.

The Agency agrees with comments supporting the exemption for emergency diesel generator tanks at nuclear power stations. EPA has further amended § 112.1(d)(4) to clarify that this exemption applies to ''any underground oil storage tanks including below-grade vaulted tanks, deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission, provided that such a tank is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, *including but* not limited to, 10 CFR part 50.'' (Emphasis added to show modified wording.) EPA has concluded that this revision makes this provision easier to understand. EPA has also amended § 112.1(d)(2)(i) to include the phrase ''including but'' before ''not limited to 10 CFR part 50'' for consistency.

3. SPCC Plan Preparation and Implementation for New Oil Production Facilities

The variables associated with the start of operations and the employment of green completion techniques at new oil production facilities could lead to significant changes in necessary storage capacity and facility design. In the December 2008 amendments, therefore, EPA finalized an amendment to allow a new oil production facility a period of six months after the start of operations to prepare and implement an SPCC Plan. EPA excluded oil production facilities from the current requirements at § 112.3(b)(1), and added a new paragraph at § 112.3(b)(3) to require the owner or operator of a new oil production facility to prepare and implement an SPCC Plan six months after the start of operations. *See* Section V.M.3 of the December 5, 2008 notice at 73 FR 74272 for more information about this amendment.

This provision does not apply to drilling or workover activities at existing oil production facilities. Drilling and workover operations are subject to the requirements at § 112.3(c) for mobile facilities, and facility owners or operators may implement a general SPCC Plan. This provision also does not apply to an existing oil production facility in which a new well is drilled, and added to the existing tank battery/facility. In this case, the facility owner or operator must amend the SPCC Plan in accordance with § 112.5(a), which requires the Plan to be amended within six months of the facility change, and implemented within six months of the amendment.

EPA agrees with comments supporting the provision to allow new oil production facilities six months to prepare and implement a Plan. On June 19, 2009 (74 FR 29136), EPA amended the compliance date for the amended SPCC rule to November 10, 2010. When the December 2008 amendments were promulgated, the provision applied at a new oil production facility that began operations after July 1, 2009, which was the applicable compliance date. In this action, EPA is making a technical correction to change the compliance date to November 10, 2010, to align with the current SPCC Plan preparation and implementation compliance date for all other facilities.

4. Compliance Date Provisions Specific to Farms

EPA is removing the paragraphs in § 112.3 specific to farms (the current § 112.3(a)(2) and (b)(2)) because on June 19, 2009 EPA established the same the compliance dates for farms as for all other facilities (74 FR 29136); such differentiated provisions are no longer necessary.

This amendment does not remove any regulatory requirement for owners or operators of facilities, including farms, in operation before August 16, 2002, to develop, implement and maintain an SPCC Plan in accordance with the SPCC regulations then in effect. Such facility owners and operators continue to be required to maintain (that is, keep on-site and implement) their Plans during the interim until the November 10, 2010 date for revising and implementing their Plans under the new amendments.

C. Provisions Removed From Final Rule

After review of comments received and consideration of all relevant facts, EPA is removing three of the provisions promulgated on December 5, 2008.

These are described in the section below.

1. Exclusions for Oil Production Facilities and Farms From Loading/Unloading Rack Requirements

In the December 2008 amendments, EPA specifically excluded onshore oil production facilities and farms from the loading/unloading rack requirements at § 112.7(h). This is because the Agency believed, and comments supported, that loading and unloading racks are not typically associated with these types of facilities. *See* Section V.F.3 of the December 5, 2008 notice at 73 FR 74251 for more information about this amendment.

Based on review of comments and consideration of all relevant facts, EPA is removing the specific exclusion for farms and oil production facilities from the loading/unloading rack requirements of § 112.7(h). Thus, EPA agrees with comments received on this amendment stating that certain facilities (*i.e.,* farms and oil production facilities) should not be treated differently than other facilities, even if loading/unloading racks are not typically associated with these types of facilities. In particular, the new definition for loading/unloading rack (finalized in December 2008 at § 112.2) clarifies the type of equipment that is subject to the requirements at § 112.7(h), eliminating the uncertainty that may have existed at farms and oil production facilities. For facilities (including farms and oil production facilities) that do not have a loading/unloading rack as defined in § 112.2, the provisions at § 112.7(h) do not apply; therefore, a specific exclusion for facilities based on the assumption that they do not have loading/unloading racks is unnecessary.

EPA does not believe there is any basis to specifically exclude loading/unloading racks from the requirements at § 112.7(h) simply because they are not typically associated at a facility within a specific industry sector.

2. Alternative Qualified Facility Eligibility Criteria for an Oil Production Facility

In the December 2008 amendments, EPA finalized a provision that provided alternative criteria to identify qualified facilities in the onshore oil production sector. The alternative qualified facility eligibility criteria for an oil production facility were: (1) No more than two producing wells per single tank battery if the facility has an injection well; or no more than four producing wells per single tank battery with no injection wells at the facility; (2) each well produces no more than ten barrels of crude oil per day; and (3) the facility has not had a single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to Plan certification, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years. EPA developed these alternative criteria because most oil production facilities would not be eligible as Tier I or Tier II qualified facilities that would allow them the option to self-certify their SPCC Plans because they generally exceed the maximum oil storage capacity criterion.

In this action, EPA is removing the alternative qualified facility eligibility criteria provision for oil production facilities in the December 2008 amendments (as described in Section V.M.6, 73 FR 74280) by amending § 112.3 to remove (g)(2)(i) and (ii), and revising (g)(2). Paragraph 112.3(g)(2) is amended to state that: ''A Tier II qualified facility is one that has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism), and has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less.''

EPA is taking this action based on review of all comments received, including those comments that raised serious questions with this specific exclusion and consideration of all relevant facts. In particular, the Agency has reconsidered its decision and concluded that the alternative qualified facility eligibility criteria for onshore oil production facilities will not effectively protect the environment from discharges of oil in quantities that may be harmful. The Agency also believes a PE should be involved in the development and certification of an SPCC Plan, unless the oil production facility is eligible to self-certify their Plans based on the qualified facilities criteria finalized in December 2006, because they typically have complex equipment and store large quantities of oil. These facilities are of further concern because they typically have operations in which oil flows continuously in unattended, remote locations and therefore pose an environmental threat.

Allowing unrestricted oil storage capacity undermines the existing qualified facility eligibility criteria and may pose an environmental risk. Many small oil production facilities produce low quantities of oil on a daily basis. EPA intended to provide these small oil production facilities an alternative approach to the existing 10,000 U.S. gallon aggregate aboveground oil storage capacity qualified facility eligibility criteria. The qualified facility eligibility criterion limits the oil storage capacity, restricting this option to only those facilities with a smaller discharge potential. Although a small oil production facility produces low quantities of oil on a daily basis, the Agency recognizes that the accumulated quantity stored can far exceed 10,000 U.S. gallons. Consequently, the Agency has determined that the alternative qualified facility eligibility criteria for oil production facilities are not as protective of the environment as the qualified facility criteria promulgated on December 26, 2006 (71 FR 77266).

Based upon EPA's understanding of the particular aboveground oil storage container capacities and the nature of the fluids handled at certain small oil production facilities, the Agency has concluded that the criteria established in the December 2008 amendments specific for oil production facilities are not an appropriate basis to determine whether an owner or operator of such a facility is a ''qualified facility,'' and be eligible to self-certify his SPCC Plan. The alternative eligibility criteria in the December 2008 amendments for oil production facilities (73 FR 74236) do not serve to identify a qualified facility consistent with the approach promulgated in the December 26, 2006 amendments (71 FR 77266), which focused on facilities with small oil storage capacities.

The ten barrels or fewer of oil per day production rate criterion was used in the December 2008 rulemaking because it is consistent with the definition of a ''stripper well,'' as codified under the CWA in 1979 (see 40 CFR 435.60) and used by the Interstate Oil and Gas Compact Commission (IOGCC).[5] These wells are often referred to as ''marginal wells.'' This criterion limits the total flowrate of oil at the facility, but it does not restrict the storage capacity. An oil production facility with only marginal wells may accumulate large amounts of oil in a relatively short period of time due to the large amount of oil and water

[5] *See* Interstate Oil and Gas Compact Commission, 2006: ''Marginal Wells: Fuels for Economic Growth'', p. 4 (defining ''stripper wells'' as wells that produce 10 barrels of oil per day or less).

mixtures typically stored at stripper well facilities. Without a limit on storage capacity, the Agency is concerned this approach increases the likelihood that relatively high-volume facilities will self-certify their SPCC Plan without the spill prevention benefits afforded by PE review and certification. This may also lead to certain oil production facilities that could reasonably be expected to cause substantial harm to the environment, and therefore subject to FRP requirements under 40 CFR 112.20, to potentially qualify to self-certify SPCC Plans under the alternative criteria.

Finally, the production rate criterion does not include the associated fluids, such as produced water, which typically contains oil. Marginal or stripper wells are often older and near the end of their production life. The fraction of produced water generated by each stripper well may be far greater than that generated by other producing wells and will likely require significant storage container capacity prior to re-injection or removal from the facility. The Agency agrees with the comment that stated there may be containers storing produced water and oil in large quantities (*e.g.*, up to one million gallons) at oil production facilities qualifying under these alternative criteria. The Agency has determined that establishing a threshold for the production rate per well does not limit the amount of oil storage, including oils in associated fluids.

The alternative qualified facility eligibility criteria for production facilities includes more complicated facilities that may pose a higher risk of oil discharge. EPA intended the alternative qualified facility criteria for oil production facilities to identify simple, uncomplicated operations consistent with the approach used for all other qualified facilities. EPA reconsidered the type and scale of operations and the equipment involved at those oil production facilities that may meet the alternative criteria, and concluded that they are generally more complex than the non-production facilities eligible under the qualified facility approach in the December 26, 2006 amendments (71 FR 77266).

Although there may be some similarities across oil production facilities, each is unique and tailored to address factors, such as the oil field, production rate, type of fluid, location on a platform or onshore, fluid viscosity, separation process, and type of water injection or disposal. Given these factors, an oil production facility's configuration and degree of complexity is variable, regardless of flow rate.

EPA agrees with the comment that stated that a small production facility is not necessarily less complex than any other oil production facility. Small oil production operations often require the same equipment, including pumping well heads, pump jacks, flowlines, separators, heater-treaters, crude oil and produced water containers, fittings, headers, valves, electrical lines and electrical motors. Failure of any of this equipment may cause an oil discharge.

In the December 2008 amendments, EPA finalized a criterion that allows the owner or operator of a facility with no more than two producing wells per single tank battery and an injection well the option to self-certify his SPCC Plan. After review of relevant facts and comments, the Agency now has concluded that an oil production facility with injection wells, regardless of the number of producing oil wells, is more complex than the intended simplicity inherent in the qualified facility eligibility criteria. An oil production facility with injection would have equipment in addition to that found in the tank battery. One or more injection wells are typically used to inject produced water underground for disposal or to enhance recovery of the oil. The underground injection process adds additional piping to the oil production facility design and layout. The injection well process typically consists of piping extending from a produced water container to the injection wellhead, valves, and pumps and may include tank level indicators, floats, flow controls, and actuators/switches. This additional equipment offers more opportunity for a potential oil discharge.

By setting a maximum number of wells as part of the alternative eligibility criteria, the Agency intended to increase the likelihood these wells were co-located with the tank battery or in relatively close proximity. However, an oil production facility with up to four wells may have long flowlines. Flowlines and intra-facility gathering lines may extend for long distances to reach a tank battery, may cross or be located closer to a navigable waterway or adjoining shorelines than the tank battery, and often runs over land owned by an entity other than the owner or operator of the oil production facility. The Agency has concluded that the criterion that limits the number of wells does not necessarily restrict the lengths of these lines, particularly with the amendment to the definition of ''facility,'' which provides the owner or operator of the facility with flexibility in defining the oil production facility, such that a formal PE certification and review, particularly for the flowline and intra-facility gathering line maintenance program, at these facilities is likely appropriate. Furthermore, the Agency recognizes that because there is currently no industry standard for flowline maintenance, the need for a PE to develop a flowline and intra-facility gathering line maintenance program in accordance with good engineering practice is even more significant.

As EPA stated in the preamble of the December 2006 final rule, facilities handling smaller amounts of oil are typically simpler in layout and operation. Most facilities with an oil storage capacity of 10,000 gallons or less are in industrial sectors that are end consumers of oil (i.e., farms, real estate, rental and leasing, retail trade, construction). These facilities generally tend to use oil on-site for heating purposes, or to fuel emergency power generators or heavy machinery. The configuration of the oil-related equipment tends to be relatively standard and simple. Oil is commonly stored in a few bulk storage containers which are often bought off-the-shelf from a tank manufacturer or installer (*e.g.,* standard UL–142 tanks) and connected with few short lengths of piping (see December 26, 2006, 71 FR 77270). This is generally not the case at oil production facilities. Therefore, for the reasons discussed above, the alternative qualified facility criteria for oil production facilities finalized in the December 2008 final rule did not achieve the result of limiting the eligibility to self-certify SPCC Plans to those facilities with simple configurations and operations.

The volume of oil discharged from production facilities is increasing. As described in EPA's study of the oil production sector (found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015), there were 401,072 marginal oil wells (*i.e.*, wells producing up to 10 barrels per day) operating in 2005. The percent of marginal oil wells varies by State, from approximately 15 percent in South Dakota, to 100 percent in several Appalachian and mid-Western States. While individual production rates may be small (an average of 2.2 barrels per day), marginal wells collectively represent a significant, and growing, share of U.S. oil production, due to the overall decline in domestic production, particularly from onshore fields. Again, as described in EPA's study of the oil production sector, according to the Department of Energy, as of 2005, about 19 percent of crude oil produced in the U.S. came from marginal wells. In the lower 48 States, marginal wells

represented approximately 30 percent of onshore oil production in 2003.[6]

The SPCC regulation is based on oil storage capacity and the potential for discharges of oil in quantities that may be harmful to navigable waters or adjoining shorelines. The Agency has concluded that small oil production facilities (*i.e.*, those comprised of marginal wells) have and can continue to pose a threat of an oil discharge to navigable waters or adjoining shorelines. EPA has reviewed the spill data for the oil production sector contained in its study of the exploration and production sector (*Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015). While these data do not characterize the extent of environmental damage caused by oil discharges from small oil production facilities, they demonstrate that the volume of oil discharged from onshore oil production facilities are increasing, and the number of oil discharges on a yearly basis has remained the same, despite a decline in crude oil production. In addition, oil production facilities are often unattended, and typically located in remote areas, which potentially increases the risk of environmental damage from an oil discharge. Therefore, the combination of the potential for oil storage capacity greater than the 10,000 U.S. gallons threshold, identified risk factors and spill history leads EPA to conclude that these facilities need the benefit of PE review and certification of their SPCC Plans.

Furthermore, information received by the Agency from other sources, which are summarized in the docket in EPA's "*Preliminary Assessment of SPCC Compliance Costs and Energy Impacts on Oil Production and Exploration*": *Overall Conclusions and Response to Comments* (EPA–HQ–OPA–2007–0584–0173), indicate increased spill potential due to equipment failure as oil production equipment ages, particularly if maintenance has been inadequate. Much of the U.S. oil production infrastructure has been in place for decades. Marginal wells, in particular, are often older wells nearing the end of their production life, and may have older equipment that may be more prone to failure.

EPA recognizes that several comments expressed general support for the alternative qualified facility eligibility criteria for an oil production facility. However, upon reconsideration of all relevant facts, including comments opposing the approach, EPA has decided for the reasons explained in detail above to remove the provisions related to alternative qualified facility eligibility criteria for an oil production facility in the final rule.

3. Exemption for Produced Water Containers

In this action, EPA is amending or removing all rule elements associated with the exemption for produced water containers in the December 2008 amendments (Section V.M.7, 73 FR 74285) as described below:

- Amending § 112.1 to remove paragraphs (d)(2)(ii)(F) and (d)(12);
- Amending § 112.3 by removing paragraph (d)(1)(vi) and designating paragraph (d)(1)(vii) as (d)(1)(vi).
- Amending § 112.5 by removing paragraphs (b) and (c), revising paragraph (d) to remove reference to deleted paragraphs, and redesignating paragraphs (d) and (e) as paragraphs (b) and (c);
- Amending § 112.6 by revising paragraphs (a)(1)(vii), (b)(1)(vii), (b)(3)(iii), and (b)(4)(ii) to remove references to the produced water container exemption and associated appurtenances downstream from the container;
- Amending § 112.7 by revising paragraph (a)(3) to remove reference to produced water containers;
- Amending § 112.9 by revising paragraph § 112.9(c)(6); and
- Revising the reference to produced water containers in Appendix G—Tier I Qualified Facility SPCC Plan Template.

EPA is taking this action after reviewing all of the relevant facts and all of the comments received on this issue for the October 2007 proposed rule (72 FR 58378 October 15, 2007) and the December 2008 amendments (73 FR 74236 and 74 FR 5900 February 3, 2009). Several comments expressed support for the exemption, with one comment arguing that regulation of produced water is outside the SPCC rule's jurisdiction. EPA also received comments that opposed the exemption for produced water containers. Based on this review, the Agency has determined that the exemption for produced water containers would not effectively protect the environment from discharges of quantities of oil that may be harmful. Comments submitted during the 2009 comment period also pointed out that the provisions for produced water containers were confusing and unnecessary, with one comment stating that the exemption lacked a supportable rationale. Other comments noted that discharges from produced water containers contain oil, and discharges occur and can cause harm. These comments are discussed in more detail below.

Containers with no oil are not subject to the SPCC rule. The Agency agrees with comments that a fluid containing no oil is not subject to the SPCC requirements. A container that does not hold oil is not regulated under the SPCC rule; therefore, a specific exemption for produced water containers that holds no oil is unnecessary. However, EPA notes that generally, produced water containers may contain oil in sufficient quantity to cause a harmful discharge. In fact, the Agency received relatively little specific information on whether there are unique characteristics to differentiate produced water containers from other bulk storage containers found at onshore oil production facilities, and none that warrant differentiated treatment.

Produced water containers typically contain oil. Several comments expressed support for an exemption of produced water containers from SPCC regulation. These comments stated that produced water containers should not be subject to the rule. Most of the comments received, however, focused on the composition of the produced water mixture and noted that produced water generally contains varying quantities of oil. While none of the comments offered detailed information on the amount of free-phase oil measured in produced water containers as requested by EPA, they generally confirm that the presence of oil in produced water is not exceptional, but rather can be expected as a matter of regular operations at oil production facilities. Oil may be recovered even after the produced water has undergone several separations at the onshore production facility, prior to reinjection of the produced water into the geological formation. Comments point out that produced water containers have an oil layer floating on top of the water. One comment indicated that produced water contains about 0.1 percent oil, but did not indicate whether this fraction represents oil dissolved or suspended in the produced water mixture and whether produced water containers may accumulate additional oil as a free-phase layer. Information received by the Agency from other sources, which are summarized in the docket (EPA–HQ–OPA–2007–0584–0015 and EPA–HQ–OPA–2007–0584–0175), indicates that

[6] *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112)) found in the docket for this rulemaking at EPA–HQ–OPA–2007–0584–0015, see page 9.

while the fraction of oil dissolved or suspended within the aqueous phase may be low, additional oil is often found as a free-phase layer floating at the surface of the produced water container. In the event of a discharge, the aqueous phase of the produced water mixture may serve to carry the oil farther overland and into waters than cases where crude oil alone is discharged.

The Agency received no additional data on the efficiency of separators typically found at onshore oil production facilities or comments on how the separation efficiency may vary over time. The Agency agrees that residence time is a key factor in achieving separation of the crude oil from other well fluids. Many oil production facilities rely on gravitational separation and long retention times to separate and recover the crude oil. Based on information reviewed by the Agency, included in the docket to the rule, separation equipment found at onshore oil production facilities are not perfectly efficient at separating oil from the produced fluids and residual oil may remain with the produced water and further separate in quiescent conditions present in the produced water container. Furthermore, separation equipment likely becomes less efficient with age and use, thus allowing more oil into a produced water container. It is therefore not exceptional for a layer of oil to accumulate in a produced water container.

In some cases, produced water containers are used as part of the separation process. In the preamble to the December 2008 amendments, EPA suggested that produced water containers may be similar to flow through-process equipment when they are used as separators (71 FR 74288, December 5, 2008). However, one comment pointed out that produced water containers are typically atmospheric storage tanks, whereas, process vessels have a pressure rating above atmospheric. EPA agrees with the comment and acknowledges that produced water containers are typically used as storage containers at the end of the separation process. Produced water containers are bulk storage containers and, therefore, are subject to the bulk storage container requirements under § 112.9(c). However, the Agency acknowledges that owners and operators of these containers may use a process to remove free-phase oil on a regular basis. To address this, the Agency is retaining the option for owners and operators of produced water containers to comply with alternative measures in lieu of sized secondary containment when a PE describes in the Plan and certifies a procedure or process to remove free-phase oil (*e.g.*, a skimming program) has been established and the facility complies with general secondary containment requirements; visual inspection; corrective action or repairs to the container; and prompt removal or remediation of oil discharges from produced water containers. For a further discussion of the alternative compliance option for produced water containers, *see* section V.A.13.f of this notice.

Produced water containers are a source of oil discharges. EPA agrees with comments arguing that spill data shows that produced water containers are a source of oil discharges from onshore oil production facilities. The Agency's analysis of spill notification data compiled by the National Response Center (NRC) for the period of 2000 through 2005, for example, identified 314 oil discharges described as having originated from tanks, including over a quarter specifically described as involving produced water containers, compared to 20 percent from crude oil stock tanks (the remaining 55 percent involved tanks holding unspecified fluids). The Agency believes that additional discharges may have been reported to State and local authorities.

Produced water containers may be equally or even more likely to fail than other containers in the tank battery. Information reviewed by the Agency and presented in the public docket (EPA–HQ–OPA–2007–0584–0015) showed corrosion as a common cause of oil and produced water discharges at onshore oil production facilities. The higher salt content of produced water fluids as compared to crude oil may lead to the increased corrosion rate of metallic components of the produced water storage system. The oil production process is configured to send continuously flowing and treated well fluids to the storage containers, with the produced water containers often located at the end of that process. The Agency's review of the circumstances of past oil discharges reported to the NRC shows that produced water containers often receive the additional well fluids when treatment equipment or appurtenances fail or when a pumper's scheduled visit is delayed, thereby increasing the amount of oil entering the produced water container and the probability that the tank will overflow, or otherwise discharge oil to navigable waters or adjoining shorelines.

Discharges of produced water can cause harm. Produced water can cause harm to surface waters, flora, fauna, and other sensitive resources and ecosystems. As described in the *Summary of DOE Comments and EPA Response* (EPA–HQ–OPA–2007–1486–0175), and the *Considerations for the Regulation of Onshore Oil Exploration and Production Facilities Under the Spill Prevention, Control, and Countermeasure Regulation* (40 CFR part 112) (EPA–HQ–OPA–2007–1486–0015) the impacts of produced water discharges are similar to the impacts observed following other oil discharges. Additionally, the co-location of oil production facilities with other land users, including farmers and ranchers, raises additional concern over potential contamination of water resources that are essential to agricultural production. One comment expressed concern that produced water could contaminate surface waterways, groundwater and drinking water; kill fish, birds, and wildlife; and cause severe health effects in humans and impact wildlife habitats. The comment also noted that it takes only a small amount of oil to affect a large area of water. EPA agrees with this comment. Under 40 CFR part 110, a discharge of oil in such quantities as ''may be harmful'' is defined as one that may violate applicable water quality standards; or cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines; or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines. In the **Federal Register** notice published when EPA provided revisions to 40 CFR part 110, EPA stated that ''[e]vidence from reviews of laboratory studies further demonstrates that very small amounts of oil, *e.g.*, less than 1 mg/L (1 ppm) can have lethal and sublethal effects on a wide variety of organisms.'' (52 FR 10716, April 2, 1987). Therefore, even if a produced water container has a very small amount of oil, the container still holds the potential to cause harm.

Upon reconsideration of all relevant facts, including comments opposing the approach (as described above), EPA has decided for the reasons explained in detail above to remove the provisions related to the produced water containers exemption in the final rule.

D. Oil and Natural Gas Pipeline Facilities

In Section V.M.9 of the December 2008 amendments (73 FR 74291, December 5, 2008), EPA provided preamble discussion regarding EPA and DOT jurisdiction. In this notice, EPA is further clarifying the jurisdiction between EPA and DOT to address confusion within the regulated community and to note that future inter-Agency discussions in the appropriate

forum on this issue will continue. The Agency continues to base its jurisdictional boundaries on Executive Order 12777 and the 1971 Memorandum of Understanding (MOU) between DOT and EPA (36 FR 24080, November 24, 1971). Under Executive Order 12777, EPA has jurisdiction over non-transportation-related onshore and offshore facilities and DOT has jurisdiction over transportation-related onshore and offshore facilities. Under the 1971 MOU (*See* Appendix A of part 112), transportation-related activities regulated by DOT and non-transportation-related activities regulated by EPA are defined.

Equipment, operations, and facilities are subject to DOT jurisdiction when they are engaged in activities subject to DOT jurisdiction. If those same facilities are also engaged in activities subject to EPA jurisdiction (such facilities are considered a ''complex''), such activities would subject the equipment, operation, or facility to EPA jurisdiction, as well. ''Complex'' is defined at § 112.2 as a ''facility possessing a combination of transportation-related and non-transportation-related components that is subject to the jurisdiction of more than one Federal agency under section 311(j) of the Clean Water Act.'' This definition was promulgated in 1994 (59 FR 34070, July 1, 1994) when EPA first required certain facility owners and operators to prepare FRPs to respond to a worst-case discharge of oil and to a substantial threat of such a discharge. During the development of the FRP rule, EPA and other Federal agencies with jurisdiction under OPA and E.O. 12777 (including DOT) met to create an implementation strategy that minimized duplication, wherever practicable and recognized State oil pollution prevention and response programs. One of the critical outgrowths of these efforts was the development of a definition for, and a consistent approach to regulate ''complexes.'' The jurisdiction over a component of a complex is determined by the activity involving that component. An activity at one time might subject a facility to one agency's jurisdiction, while a different activity at the same facility using the same structure, container or equipment might subject the facility to the jurisdiction of another agency.

Owners and operators have questioned how to determine whether a container (*e.g.*, a breakout tank), an activity (*e.g.*, drag reducing agent storage/injection or other transfer activities) or a facility (*e.g.*, a terminal or a pipeline facility) is considered ''transportation-related'' or ''non-transportation-related,'' and, subsequently, whether DOT and/or EPA regulatory requirements apply. To clarify jurisdiction, particularly regarding jurisdiction over breakout tanks and activities at certain facilities, in February 2000, EPA and DOT signed a joint memorandum, ''Jurisdiction over Breakout Tanks/Bulk Storage Tanks (Containers) at Transportation-Related and Non-Transportation-Related Facilities'' (February 4, 2000). Industry has raised questions and concerns about duplicative jurisdiction in the joint memorandum and for other oil storage containers and activities not specifically addressed by it. EPA will continue to work with DOT/PHMSA to provide such clarification and to minimize dual regulation, where appropriate.

VI. 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's recommendations have been documented in the docket for this rulemaking. In addition, EPA prepared a regulatory impact analysis (RIA) of the potential costs and benefits associated with this action entitled, ''Regulatory Impact Analysis for the 2008 and 2009 Final Amendments to the Oil Pollution Prevention Regulations (40 CFR part 112)'' (October 20, 2009). A copy of the RIA is available in the docket for this rulemaking and is briefly summarized below.

EPA estimated the combined economic impact of the December 2008 amendments and the changes made to it in this action. The SPCC rule requirements at 40 CFR part 112, as amended in July 2002 (67 FR 47042, July 17, 2002) is the baseline to estimate the potential cost savings to regulated facilities associated with these amendments. The RIA compares the compliance costs for owners and operators facilities affected by the 2008 and 2009 amendments to the costs associated with the 2002 SPCC rule revisions. EPA estimated cost savings from the following rule elements: (1) Exempt hot-mix asphalt (HMA) and HMA containers; (2) exempt pesticide application equipment and related mix containers when crop oil or adjuvant oil is added to pesticide formulations; (3) clarify the applicability of mobile refueler requirements to farm nurse tanks; (4) exempt residential heating oil containers, including those located at farms; (5) amend the definition of ''facility'' to clarify the currently existing flexibility associated with describing a facility's boundaries; (6) amend the facility diagram requirement to provide additional clarity; (7) define ''loading/unloading rack''; (8) provide streamlined requirements for a subset of qualified facilities; (9) amend the general secondary containment requirement to provide more clarity; (10) extend the regulatory relief provided to mobile refuelers in 2006 to non-transportation-related tank trucks at facilities subject to the SPCC rule; (11) amend the security requirements; (12) amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards; (13) amend the integrity testing requirements for containers that store AFVOs that meet certain criteria; (14) tailor a number of requirements at oil production facilities; and (15) exempt underground oil storage tanks at nuclear power generation facilities. EPA also provided clarification in the preamble to the December 2008 amendments on two additional issues identified by the regulated community: (1) The consideration of man-made structures in determining how to comply with the SPCC rule requirements and (2) the applicability of the rule to wind turbines for electricity generation.

For each of these components, excluding those that only provide clarity, EPA estimated potential cost savings to regulated facilities that may result from reductions in compliance costs. The main steps used to estimate the compliance cost impacts of the rule amendments are:

- Develop the baseline universe of SPCC-regulated facilities;
- Estimate the number of facilities affected by the rule amendments;
- Estimate changes in unit compliance cost for each regulated facility affected by the rule;
- Estimate total compliance cost savings to owners and operators of potentially affected facilities; and
- Annualize compliance cost savings over a ten-year period, 2010 through 2019, and discount the estimates using three and seven percent discount rates.

In its RIA, EPA uses four key assumptions:

1. Cost minimization behavior applies to all owners and operators of facilities that qualify for the reduced regulatory requirements, whereby all those affected would seek burden relief.

2. Consistent with EPA's guidelines for conducting economic analyses, all existing owners and operators of facilities are in full compliance with the July 17, 2002 amendments to the SPCC rule (67 FR 47042).

3. Owners and operators of existing SPCC-regulated facilities would forgo compliance activities offered as alternatives where there is only a one-time initial investment because they would have already incurred the one-time cost. For example, EPA assumes that an owner or operator of an existing facility who qualifies for reduced security requirements under the rule amendment that allows facility owners or operators to tailor their security measures to the facility's specific characteristics and location, would have already provided the security measures under the July 2002 rule amendments or demonstrated environmental equivalence for tailored security measures. Therefore, owners and operators of existing facilities would not take advantage of the provided alternative.

4. Compliance is nationally consistent, although EPA recognizes that there is variability in State regulations and the distribution of affected facilities.

Exhibit 1 presents the estimated cost savings for each rule provision and for the rule amendments in total. For several rule amendments, such as the security requirements and facilities handling AFVOs, EPA did not have data on the number of affected facilities within a general industry sector; thus, it developed three scenarios to evaluate a range of cost savings.[7] EPA estimates that the total cost savings for this action is about $95 million on an annualized basis (2007$). The total cost savings estimates range from a low of about $92 million to a high of about $100 million on an annualized basis (2007$).These estimates are not necessarily additive, given that they do not account for interactions that might exist among the various components of the rule.[8]

The oil production sector and farms will benefit from multiple components of the 2008 and 2009 amendments. Specifically, farms will benefit from the exemption of pesticide application equipment, the exemption of residential heating oil containers, the clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the final amendments to the security requirements, and the amendments to integrity-testing requirements. The total cost savings to farm owners and operators from these amendments are estimated at $13 million on an annualized basis (2007$).

The oil production sector will also benefit from a number of the revisions to the SPCC rules, including the clarification to the facility diagram requirements, the streamlined requirements for Tier I qualified facilities, the six-month delay in SPCC Plan preparation and implementation, the alternative measures for flow-through process vessels and produced water containers in lieu of sized secondary containment requirements. The total savings to owners and operators of oil production facilities from all of the amendments that affect this sector are estimated at $35 million on an annualized basis (2007$).

EXHIBIT 1—ESTIMATED COMPLIANCE COST SAVINGS FOR THE REGULATORY AMENDMENTS

Rule component/scenario	Annualized cost savings ($2007, in millions, 7% discount rate)
Hot-Mix Asphalt:	
Exempt HMA containers	$8.
Farms:	
Exempt pesticide application equipment and related mix containers	
Applicability of Mobile Refueler Requirements to Farm Nurse Tanks	$4.
Residential Heating Oil Containers:	
Exempt single-family residential heating oil containers	$2.
Definition of Facility:	
Revise the definition of "facility"	No cost impact.
Facility Diagram:	
Revise facility diagram requirement	$3.
Loading/Unloading Racks:	
Define "loading/unloading rack"	No cost impact.
Tier I Qualified Facilities:	
Provide streamlined requirements for Tier I qualified facilities	$24.
General Secondary Containment:	
Revisions to the general secondary containment provision	No cost impact.
General Secondary Containment for Non-Transportation-Related Tank Trucks:	
Extend regulatory relief for mobile refuelers to the non-transportation-related tank trucks	No cost impact.
Security Requirements:	
Revise security requirements[2]	$9.
Integrity Testing:	
Amend the integrity testing requirements to allow a greater amount of flexibility in the use of industry standards at all facilities.	$11.
Animal Fats and Vegetable Oil:	
Amend integrity testing requirements for AFVO containers that meet certain criteria[3]	$2.
Oil Production Facilities:	
Six-month delay for Plan preparation and implementation	$24.
Exempt flowlines and gathering lines from secondary containment	No net cost impact.
Flow-through process vessels	$7.

[7] For example, to develop a range for the number of affected AFVO facilities, EPA contacted industry experts who determined that 40 percent to 90 percent of containers at AFVO facilities are made of stainless steel and almost all containers have bottom drainage. Therefore, based on professional judgment, the Agency considered three scenarios: 40% (low), 65% (medium) and 90% (high) of all AFVO facilities would have food oil tanks that are eligible.

[8] Certain industry sectors are affected by multiple rule provisions. As a result, taking advantage of one revised provision might preclude a facility from benefiting from another amendment. The six-month delay is specifically designed to allow time for the facility oil production operations to stabilize in order to avoid the need for multiple certifications of the Plan by a PE.

EXHIBIT 1—ESTIMATED COMPLIANCE COST SAVINGS FOR THE REGULATORY AMENDMENTS—Continued

Rule component/scenario	Annualized cost savings ($2007, in millions, 7% discount rate)
Alternative compliance measures for produced water containers	No cost savings estimated.
Man-Made Structures:	
Consider manmade structures in determining SPCC rule applicability	No cost impact.
Nuclear Power Stations:	
Exempt underground oil storage tanks at nuclear power generation facilities	Less than $1.
Wind turbines:	
Clarify applicability of the rule to wind turbines used to produce electricity	No cost impact.
Total	$95.

[2] Mid-point estimate (50% of farms affected). Cost savings might be higher or lower using different assumptions.
[3] Mid-point estimate (65% of facilities affected). Cost savings might be lower using different assumptions.

EPA recognizes that the economic analysis is constrained by limited availability of data and information. The SPCC regulation does not have a notification requirement for regulated facilities and thus, EPA relies on State information; Federal and proprietary databases; and information from industry experts as a basis for the cost information included in the analysis.

B. Paperwork Reduction Act

The information collection requirements for this final rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection requirements are not enforceable until OMB approves them. The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 0328.15.

EPA does not collect the information required by the SPCC rule on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must generally be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility owner or operator helps prevent oil discharges to navigable waters or adjoining shorelines and mitigate the environmental damage caused by such discharges. Therefore, the primary user of the data is facility personnel. While EPA may, from time to time, request information under these regulations, such requests are not routine.

Although facility personnel are the primary data user, EPA also uses the data in certain situations. In particular, EPA reviews SPCC Plans: (1) When it requests a facility owner or operator to submit required information in the event of certain discharges of oil or to evaluate an extension request; and (2) as part of EPA's inspection program. State and local governments also may use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness efforts. Preparation of the information for affected facilities is required under section 311(j)(1) of the CWA, as implemented by 40 CFR part 112.

EPA estimates that in the absence of the December 2008 final rule and the changes made in this action, approximately 623,000 existing facilities would be subject to the SPCC rule in November 2010 and would be expected to have SPCC Plans. In addition, EPA estimates that approximately 17,400 new facilities would become subject to the SPCC requirements during that year, resulting in a total of about 640,000 regulated facilities in 2010.[9]

Under the December 2008 and 2009 amendments, EPA is: exempting the storage capacity of containers solely containing HMA, residential heating oil containers at single-family residences, pesticide application equipment and related mix containers, and underground oil storage tanks at nuclear power generation facilities from the SPCC requirements; amending the definition of ''facility'' to clarify that contiguous or non-contiguous buildings, properties, parcels, leases, structures, installations, pipes, or pipelines may be considered separate facilities, and to specify that the ''facility'' definition, rather than the ''production facility'' definition, governs the applicability of 40 CFR part 112; amending the facility diagram requirement to provide additional clarity for all facilities; providing a definition for the term ''loading/unloading rack,'' which determines whether a facility is subject to the provisions at § 112.7(h); providing an option that allows a subset of qualified facilities (Tier I) to complete and implement an SPCC Plan template (Appendix G to 40 CFR part 112) in order to comply with the SPCC rule requirements; amending the general secondary containment requirements to provide more clarity; exempting non-transportation-related tank trucks from the sized secondary containment requirements; modifying the security requirements to allow an owner or operator to tailor its security measures to the facility's specific characteristics and location, which are the same as those provided for qualified facilities, as promulgated in December 2006; replacing the current integrity testing requirements with the requirements provided for qualified facilities, as promulgated in December 2006; providing flexibility in the rule for determining the scope of integrity testing that is appropriate for containers that store AFVOs that are intended for human consumption and that meet other criteria; and finally, streamlining the requirements for oil production facilities by modifying the definition of production facility to be consistent with the amendments to the definition of facility, extending the timeframe by which a new oil production facility must prepare and implement an SPCC Plan, providing an alternative option for flow-through process vessels at oil production facilities to comply with the general secondary containment requirements and additional oil spill prevention measures in lieu of the sized secondary containment requirements, providing an alternative option for produced water containers to comply with general secondary containment and additional oil spill prevention measures including a PE certified program to remove free-phase oil from the surface of the produced water container in lieu of the sized secondary containment requirements, establishing more specific requirements for the flowline/intra-facility gathering line maintenance program, providing an alternative compliance option for contingency planning in lieu of secondary containment for flowlines and intra-facility gathering lines at oil production facilities, providing an exemption for certain intra-facility

[9] To estimate the number of SPCC-regulated facilities in 2010, EPA used the estimated number of facilities for 2005 (571,000) and applied annual, industry-specific growth rates that resulted in about 640,000 facilities.

gathering lines that are regulated by DOT, and clarifying the definition of ''permanently closed'' as it applies to an oil production facility.

Under the 2008 and 2009 final amendments, an estimated 640,000 regulated facilities are subject to the SPCC information collection requirements of this rule in 2010.[10] The Agency estimates that as a result of these amendments to tailor, clarify, and streamline certain SPCC requirements, the reporting and recordkeeping burden would decrease by approximately 1.3 million hours. The rule amendments would reduce capital and operation and management costs by approximately $7.5 million on an annualized basis. Burden is defined at 5 CFR 1320.3(b).

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. When this ICR is approved by OMB, the Agency 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 Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute 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 organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, a small entity is defined as: (1) a small business as defined in the U.S. Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and oil production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $0.5 million to $27.5 million per year in sales receipts, depending on the industry, or 500 or fewer employees, respectively; (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 that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the December 2008 amendments and the changes made in this action on small entities, the Agency certifies that this action would not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities'' (5 U.S.C. 603 and 604). Thus, an agency may certify that a rule would not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

Under the 2008 and 2009 amendments, the following issues are addressed: exempt HMA and HMA containers, pesticide application equipment and related mix containers, residential heating oil containers at single-family residences, and underground oil storage tanks at nuclear power generation facilities from the SPCC requirements; amend the definition of ''facility'' to clarify the flexibility associated with the existing definition in describing a facility's boundaries; clarify how containers, fixed and mobile, are identified on the facility diagram; define ''loading/unloading rack'' to clarify whether a facility is subject to the SPCC rule requirements of § 112.7(h); streamline the requirements for a subset of qualified facilities (Tier I qualified facilities); amend the general secondary containment requirements to provide more clarity; exempt non-transportation-related tank trucks from the sized secondary containment requirements; amend the facility security requirements to allow an owner or operator to tailor security measures to a facility's specific characteristics and location, which are the same as those provided for qualified facilities, as promulgated in December 2006; replace the current integrity testing requirements with the regulatory requirements for a qualified facility promulgated in December 2006; provide flexibility in the rule to determine the scope of integrity testing that is appropriate for containers that store AFVOs that are intended for human consumption and that meet other criteria; and initiate a number of amendments to tailor the requirements for oil production facilities to address concerns raised by the oil production sector, respectively.

Overall, EPA estimates that the December 2008 amendments and the revisions made in this action will reduce annual compliance costs by approximately $95 million on an annualized basis (2007$) for owners and operators of affected facilities. Total costs were annualized over a 10-year period using a seven percent discount rate. EPA derived these savings by estimating the number of facilities affected by each 2008 and 2009 amendment; identifying the specific behavioral changes that may occur (for example, choosing to prepare an SPCC Plan template instead of a full SPCC Plan); estimating the unit costs of compliance under the baseline and amended scenarios; and applying the change in unit costs to the projected number of affected facilities.

EPA has therefore concluded that this rule will relieve regulatory burden for small entities and therefore, certify that this rule will not have a significant economic impact on a substantial number of 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 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 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

[10] To estimate the number of SPCC-regulated facilities in 2010, EPA used the estimated number of facilities for 2005 (571,000) and applied annual industry-specific growth rates.

adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the 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 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.

EPA has determined that this action 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 December 2008 final rule and the changes made in this action would reduce compliance costs on owners and operators of affected facilities by approximately $95 million on an annualized basis (2007$), although EPA acknowledges this total estimate is derived from analyses of individual major components of the rule that are not necessarily additive, given that they do not account for interactions that may exist among the various components. Thus, this rule amendment is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule amendment contains no regulatory requirements that might significantly or uniquely affect small governments. As explained above, the effect of the rule amendment will be to reduce burden for facility owners and operators, including certain small governments that are subject to the rule.

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.''

The December 2008 amendments and the changes made in this action do not have federalism implications. It 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. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters or adjoining shorelines. EPA recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This rule amendment will not preempt State law or regulations. Thus, Executive Order 13132 does not apply to this action.

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 action does not have tribal implications, as specified in Executive Order 13175. This rule amendment will not significantly or uniquely affect communities of Indian trial governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045—Protection of Children From Environmental Health Risks and 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 planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Although the combined impact of the December 2008 final rule and of the changes made in this action is economically significant, it is not subject to the Executive Order because the Agency does not have reason to believe the environmental health or safety risk addressed by this action presents a disproportionate risk to children.

H. Executive Order 13211—Actions That Significantly Affect Energy Supply, Distribution, or Use

This action 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 overall effect of the action is to decrease the regulatory burden on facility owners or operators subject to its provisions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, such as 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 owner or operator of a facility subject to the SPCC rule has the flexibility to consider applicable industry standards in the development of an SPCC Plan, in accordance with good engineering practice. However, this rulemaking does not involve technical standards, as it does not set or incorporate by reference any one specific technical standard. Therefore, the NTTAA does not apply.

J. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high

and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. The overall effect of the action is to decrease the regulatory burden on facility owners or operators subject to its provisions, while increasing the level of compliance with the SPCC program requirements, which should provide greater environmental protection.

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 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 a ''major rule'' as defined by 5 U.S.C. 804(2) because it will likely result in an annual effect on the economy of $100 million or more. This rule will be effective on January 14, 2010.

List of Subjects in 40 CFR Part 112

Environmental protection, Animal fats and vegetable oils, Hot-mix asphalt, Farms, Flammable and combustible materials, Integrity testing, Loading racks, Materials handling and storage, Natural gas, Oil pollution, Oil and gas exploration and production, Oil spill response, Oil spill prevention, Penalties, Petroleum, Reporting and recordkeeping requirements, Secondary containment, Security, Tanks, Unloading racks, Water pollution control, Water resources.

Dated: November 5, 2009.

Lisa P. Jackson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; and E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

■ 2. Amend § 112.1 as follows:
■ a. By revising paragraph (d)(2)(i);
■ b. By removing paragraph (d)(2)(ii)(F);
■ c. By revising paragraph (d)(4); and
■ d. By removing paragraph (d)(12)

§ 112.1 General applicability.

* * * * *

(d) * * *

(2)(i) The completely buried storage capacity of the facility is 42,000 U.S. gallons or less of oil. For purposes of this exemption, the completely buried storage capacity of a facility excludes the capacity of a completely buried tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, that is currently subject to all of the technical requirements of part 280 of this chapter or all of the technical requirements of a State program approved under part 281 of this chapter, or the capacity of any underground oil storage tanks deferred under 40 CFR part 280 that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission and subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50. The completely buried storage capacity of a facility also excludes the capacity of a container that is ''permanently closed,'' as defined in § 112.2 and the capacity of intra-facility gathering lines subject to the regulatory requirements of 49 CFR part 192 or 195.

* * * * *

(4) Any completely buried storage tank, as defined in § 112.2, and connected underground piping, underground ancillary equipment, and containment systems, at any facility, that is subject to all of the technical requirements of part 280 of this chapter or a State program approved under part 281 of this chapter, or any underground oil storage tanks including below-grade vaulted tanks, deferred under 40 CFR part 280, as originally promulgated, that supply emergency diesel generators at a nuclear power generation facility licensed by the Nuclear Regulatory Commission, provided that such a tank is subject to any Nuclear Regulatory Commission provision regarding design and quality criteria, including, but not limited to, 10 CFR part 50. Such emergency generator tanks must be marked on the facility diagram as provided in § 112.7(a)(3), if the facility is otherwise subject to this part.

* * * * *

■ 3. Amend § 112.3 as follows:
■ a. By designating paragraph (a)(1) as paragraph (a), and removing paragraph (a)(2);
■ b. By revising the newly designated paragraph (a);
■ c. By removing paragraph (b)(2), and designating paragraph (b)(3) as (b)(2);
■ d. By revising paragraph (b)(1) and the newly designated paragraph (b)(2);
■ e. By removing paragraph (d)(1)(vi), and designating paragraph (d)(1)(vii) as (d)(1)(vi);
■ f. By revising the newly designated paragraph (d)(1)(vi);
■ g. By revising paragraph (g)(2).

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 10, 2010. If your onshore or offshore facility becomes operational after August 16, 2002, through November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2010.

(b)(1) If you are the owner or operator of an onshore or offshore facility (excluding oil production facilities) that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(2) If you are the owner or operator of an oil production facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan within six months after you begin operations.

* * * * *

(d) * * *

(1) * * *

(vi) That, if applicable, for a produced water container subject to § 112.9(c)(6), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and

the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan.

* * * * *

(g) * * *

(2) A Tier II qualified facility is one that has had no single discharge as described in § 112.1(b) exceeding 1,000 U.S. gallons or no two discharges as described in § 112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to this part if the facility has been in operation for less than three years (other than discharges as described in § 112.1(b) that are the result of natural disasters, acts of war, or terrorism), and has an aggregate aboveground oil storage capacity of 10,000 U.S. gallons or less.

■ 4. Amend § 112.5 as follows:

■ a. By removing paragraphs (b) and (c) and designating paragraph (d) as paragraph (b)

■ b. By revising the newly designated paragraph (b); and

■ c. By designating paragraph (e) as paragraph (c).

§ 112.5 Amendment of Spill Prevention, Control, and Countermeasure Plan by owners or operators.

* * * * *

(b) Notwithstanding compliance with paragraph (a) of this section, complete a review and evaluation of the SPCC Plan at least once every five years from the date your facility becomes subject to this part; or, if your facility was in operation on or before August 16, 2002, five years from the date your last review was required under this part. As a result of this review and evaluation, you must amend your SPCC Plan within six months of the review to include more effective prevention and control technology if the technology has been field-proven at the time of the review and will significantly reduce the likelihood of a discharge as described in § 112.1(b) from the facility. You must implement any amendment as soon as possible, but not later than six months following preparation of any amendment. You must document your completion of the review and evaluation, and must sign a statement as to whether you will amend the Plan, either at the beginning or end of the Plan or in a log or an appendix to the Plan. The following words will suffice, ''I have completed review and evaluation of the SPCC Plan for (name of facility) on (date), and will (will not) amend the Plan as a result.''

* * * * *

■ 5. Revise § 112.6 as follows:

■ a. By revising paragraph (a)(1)(vii);

■ b. By revising paragraph (b)(1)(vii);

■ c. By revising paragraph (b)(3)(iii); and

■ d. By revising paragraph (b)(4)(ii);

§ 112.6 Qualified Facilities Plan Requirements.

* * * * *

(a) * * *

(1) * * *

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d) or include measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping; and

* * * * *

(b) * * *

(1) * * *

(vii) The Plan does not deviate from any requirement of this part as allowed by § 112.7(a)(2) and 112.7(d) or include measures pursuant to § 112.9(c)(6) for produced water containers and any associated piping, except as provided in paragraph (b)(3) of this section; and

* * * * *

(3) * * *

(iii) *Produced Water Containers.* Your Plan may not include any alternative procedures for skimming produced water containers in lieu of sized secondary containment pursuant to § 112.9(c)(6), unless they have been reviewed and certified in writing by a Professional Engineer, as provided in paragraph (b)(4) of this section.

(4) * * *

(ii) As described in paragraph (b)(3) of this section, the facility owner or operator may not self-certify measures as described in § 112.9(c)(6) for produced water containers and any associated piping. Such measures must be reviewed and certified, in writing, by a licensed Professional Engineer, in accordance with § 112.3(d)(1)(vi).

* * * * *

■ 6. Amend § 112.7 as follows:

■ a. By revising paragraph (a)(3) introductory text; and

■ b. By revising paragraph (h) introductory text.

§ 112.7 General requirements for Spill Prevention, Control, and Countermeasure Plans.

* * * * *

(a) * * *

(3) Describe in your Plan the physical layout of the facility and include a facility diagram, which must mark the location and contents of each fixed oil storage container and the storage area where mobile or portable containers are located. The facility diagram must identify the location of and mark as ''exempt'' underground tanks that are otherwise exempted from the requirements of this part under § 112.1(d)(4). The facility diagram must also include all transfer stations and connecting pipes, including intra-facility gathering lines that are otherwise exempted from the requirements of this part under § 112.1(d)(11). You must also address in your Plan:

* * * * *

(h) Facility tank car and tank truck loading/unloading rack (excluding offshore facilities).

* * * * *

Subpart B—[Amended]

■ 7. Amend § 112.9 by revising paragraph (c)(6) to read as follows:

§ 112.9 Spill Prevention, Control, and Countermeasure Plan Requirements for onshore oil production facilities (excluding drilling and workover facilities).

* * * * *

(c) * * *

(6) *Produced water containers.* For each produced water container, comply with § 112.9(c)(1) and (c)(4); and § 112.9(c)(2) and (c)(3), or comply with the provisions of the following paragraphs (c)(6)(i) through (v):

(i) Implement, on a regular schedule, a procedure for each produced water container that is designed to separate the free-phase oil that accumulates on the surface of the produced water. Include in the Plan a description of the procedures, frequency, amount of free-phase oil expected to be maintained inside the container, and a Professional Engineer certification in accordance with § 112.3(d)(1)(vi). Maintain records of such events in accordance with § 112.7(e). Records kept under usual and customary business practices will suffice for purposes of this paragraph. If this procedure is not implemented as described in the Plan or no records are maintained, then you must comply with § 112.9(c)(2) and (c)(3).

(ii) On a regular schedule, visually inspect and/or test the produced water container and associated piping for leaks, corrosion, or other conditions that could lead to a discharge as described in § 112.1(b) in accordance with good engineering practice.

(iii) Take corrective action or make repairs to the produced water container and any associated piping as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge.

(iv) Promptly remove or initiate actions to stabilize and remediate any accumulations of oil discharges

associated with the produced water container.

(v) If your facility discharges more than 1,000 U.S. gallons of oil in a single discharge as described in § 112.1(b), or discharges more than 42 U.S. gallons of oil in each of two discharges as described in § 112.1(b) within any twelve month period from a produced water container subject to this subpart (excluding discharges that are the result of natural disasters, acts of war, or terrorism) then you must, within six months from the time the facility becomes subject to this paragraph, ensure that all produced water containers subject to this subpart comply with § 112.9(c)(2) and (c)(3).

* * * * *

■ 8. Revise Appendix G to Part 112 to read as follows:

BILLING CODE 6560–50–P

Tier I Qualified Facility SPCC Plan

This template constitutes the SPCC Plan for the facility, when completed and signed by the owner or operator of a facility that meets the applicability criteria in §112.3(g)(1). This template addresses the requirements of 40 CFR part 112. Maintain a complete copy of the Plan at the facility if the facility is normally attended at least four hours per day, or for a facility attended fewer than four hours per day, at the nearest field office. When making operational changes at a facility that are necessary to comply with the rule requirements, the owner/operator should follow state and local requirements (such as for permitting, design and construction) and obtain professional assistance, as appropriate.

Facility Description

Facility Name _____

Facility Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number _____ ( ) -

Owner or operator Name _____

Owner or operator Address _____

City _____ State _____ ZIP _____

County _____ Tel. Number _____ ( ) -

I. Self-Certification Statement (§112.6(a)(1))

The owner or operator of a facility certifies that each of the following is true in order to utilize this template to comply with the SPCC requirements:

I _____, certify that the following is accurate:

1. I am familiar with the applicable requirements of 40 CFR part 112;
2. I have visited and examined the facility;
3. This Plan was prepared in accordance with accepted and sound industry practices and standards;
4. Procedures for required inspections and testing have been established in accordance with industry inspection and testing standards or recommended practices;
5. I will fully implement the Plan;
6. This facility meets the following qualification criteria (under §112.3(g)(1)):
   a. The aggregate aboveground oil storage capacity of the facility is 10,000 U.S. gallons or less; and
   b. The facility has had no single discharge as described in §112.1(b) exceeding 1,000 U.S. gallons and no two discharges as described in §112.1(b) each exceeding 42 U.S. gallons within any twelve month period in the three years prior to the SPCC Plan self-certification date, or since becoming subject to 40 CFR part 112 if the facility has been in operation for less than three years (not including oil discharges as described in §112.1(b) that are the result of natural disasters, acts of war, or terrorism); and

c. There is no individual oil storage container at the facility with an aboveground capacity greater than 5,000 U.S. gallons.

7. This Plan does not deviate from any requirement of 40 CFR part 112 as allowed by §112.7(a)(2) (environmental equivalence) and §112.7(d) (impracticability of secondary containment) or include an measures pursuant to §112.9(c)(6) for produced water containers and any associated piping;
8. This Plan and individual(s) responsible for implementing this Plan have the full approval of management and I have committed the necessary resources to fully implement this Plan.

I also understand my other obligations relating to the storage of oil at this facility, including, among others:

1. To report any oil discharge to navigable waters or adjoining shorelines to the appropriate authorities. Notification information is included in this Plan.
2. To review and amend this Plan whenever there is a material change at the facility that affects the potential for an oil discharge, and at least once every five years. Reviews and amendments are recorded in an attached log [See Five Year Review Log and Technical Amendment Log in Attachments 1.1 and 1.2.]
3. Optional use of a contingency plan. A contingency plan:
   a. May be used in lieu of secondary containment for qualified oil-filled operational equipment, in accordance with the requirements under §112.7(k), and;
   b. Must be prepared for flowlines and/or intra-facility gathering lines which do not have secondary containment at an oil production facility, and;
   c. Must include an established and documented inspection or monitoring program; must follow the provisions of 40 CFR part 109; and must include a written commitment of manpower, equipment and materials to expeditiously remove any quantity of oil discharged that may be harmful. If applicable, a copy of the contingency plan and any additional documentation will be attached to this Plan as Attachment 2.

I certify that I have satisfied the requirement to prepare and implement a Plan under §112.3 and all of the requirements under §112.6(a). I certify that the information contained in this Plan is true.

Signature _____ Title: _____

Name _____ Date: ____/_____/20___

II. Record of Plan Review and Amendments

Five Year Review (§112.5(b)):

Complete a review and evaluation of this SPCC Plan at least once every five years. As a result of the review, amend this Plan within six months to include more effective prevention and control measures for the facility, if applicable. Implement any SPCC Plan amendment as soon as possible, but no later than six months following Plan amendment. Document completion of the review and evaluation, and complete the Five Year Review Log in Attachment 1.1. If the facility no longer meets Tier I qualified facility eligibility, the owner or operator must revise the Plan to meet Tier II qualified facility requirements, or complete a full PE certified Plan.

Table G-1 Technical Amendments (§§112.5(a), (c) and 112.6(a)(2))	
This SPCC Plan will be amended when there is a change in the facility design, construction, operation, or maintenance that materially affects the potential for a discharge to navigable waters or adjoining shorelines. Examples include adding or removing containers, reconstruction, replacement, or installation of piping systems, changes to secondary containment systems, changes in product stored at this facility, or revisions to standard operating procedures.	☐
Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template. *[§112.6(a)(2)]* [See Technical Amendment Log in Attachment 1.2]	☐

III. Plan Requirements

1. Oil Storage Containers (§112.7(a)(3)(i)):

Table G-2 Oil Storage Containers and Capacities		
This table includes a complete list of all oil storage containers (aboveground containers[a] and completely buried tanks[b]) with capacity of 55 U.S. gallons or more, unless otherwise exempt from the rule. For mobile/portable containers, an estimate number of containers, types of oil, and anticipated capacities are provided.		☐
Oil Storage Container *(indicate whether aboveground (A) or completely buried (B))*	**Type of Oil**	**Shell Capacity (gallons)**
	Total Aboveground Storage Capacity [c]	_____ gallons
	Total Completely Buried Storage Capacity	_____ gallons
	Facility Total Oil Storage Capacity	_____ gallons

[a] Aboveground storage containers that must be included when calculating total facility oil storage capacity include: tanks and mobile or portable containers; oil-filled operational equipment (e.g. transformers); other oil-filled equipment, such as flow-through process equipment. Exempt containers that are not included in the capacity calculation include: any container with a storage capacity of less than 55 gallons of oil; containers used exclusively for wastewater treatment; permanently closed containers; motive power containers; hot-mix asphalt containers; heating oil containers used solely at a single-family residence; and pesticide application equipment or related mix containers.

[b] Although the criteria to determine eligibility for qualified facilities focuses on the aboveground oil storage containers at the facility, the completely buried tanks at a qualified facility are still subject to the rule requirements and must be addressed in the template; however, they are not counted toward the qualified facility applicability threshold.

[c] Counts toward qualified facility applicability threshold.

2. Secondary Containment and Oil Spill Control (§§112.6(a)(3)(i) and (ii), 112.7(c) and 112.9(c)(2)):

Table G-3 Secondary Containment and Oil Spill Control	
Appropriate secondary containment and/or diversionary structures or equipment[a] is provided for all oil handling containers, equipment, and transfer areas to prevent a discharge to navigable waters or adjoining shorelines. The entire secondary containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from a primary containment system, such as a tank or pipe, will not escape the containment system before cleanup occurs.	☐

[a] Use one of the following methods of secondary containment or its equivalent: (1) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (2) Curbing; (3) Culverting, gutters, or other drainage systems; (4) Weirs, booms, or other barriers; (5) Spill diversion ponds; (6) Retention ponds; or (7) Sorbent materials.

Table G-4 below identifies the tanks and containers at the facility with the potential for an oil discharge; the mode of failure; the flow direction and potential quantity of the discharge; and the secondary containment method and containment capacity that is provided.

Table G-4 Containers with Potential for an Oil Discharge

Area	Type of failure (discharge scenario)	Potential discharge volume (gallons)	Direction of flow for uncontained discharge	Secondary containment method[a]	Secondary containment capacity (gallons)
Bulk Storage Containers and Mobile/Portable Containers[b]					
Oil-filled Operational Equipment (e.g., hydraulic equipment, transformers)[c]					
Piping, Valves, etc.					
Product Transfer Areas (location where oil is loaded to or from a container, pipe or other piece of equipment.)					
Other Oil-Handling Areas or Oil-Filled Equipment (e.g. flow-through process vessels at an oil production facility)					

[a] Use one of the following methods of secondary containment or its equivalent: (1) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (2) Curbing; (3) Culverting, gutters, or other drainage systems; (4) Weirs, booms, or other barriers; (5) Spill diversion ponds; (6) Retention ponds; or (7) Sorbent materials.

[b] For storage tanks and bulk storage containers, the secondary containment capacity must be at least the capacity of the largest container plus additional capacity to contain rainfall or other precipitation.

[c] For oil-filled operational equipment: Document in the table above if alternative measures to secondary containment (as described in §112.7(k)) are implemented at the facility.

3. Inspections, Testing, Recordkeeping and Personnel Training (§§112.7(e) and (f), 112.8(c)(6) and (d)(4), 112.9(c)(3), 112.12(c)(6) and (d)(4)):

Table G-5 Inspections, Testing, Recordkeeping and Personnel Training	
An inspection and/or testing program is implemented for all aboveground bulk storage containers and piping at this facility. *[§§112.8(c)(6) and (d)(4), 112.9(c)(3), 112.12(c)(6) and (d)(4)]*	☐
The following is a description of the inspection and/or testing program (e.g. reference to industry standard utilized, scope, frequency, method of inspection or test, and person conducting the inspection) for all aboveground bulk storage containers and piping at this facility:	
Inspections, tests, and records are conducted in accordance with written procedures developed for the facility. Records of inspections and tests kept under usual and customary business practices will suffice for purposes of this paragraph. *[§112.7(e)]*	☐
A record of the inspections and tests are kept at the facility or with the SPCC Plan for a period of three years. *[§112.7(e)]* [See Inspection Log and Schedule in Attachment 3.1]	☐
Inspections and tests are signed by the appropriate supervisor or inspector. *[§112.7(e)]*	☐
Personnel, training, and discharge prevention procedures [§112.7(f)]	
Oil-handling personnel are trained in the operation and maintenance of equipment to prevent discharges; discharge procedure protocols; applicable pollution control laws, rules, and regulations; general facility operations; and, the contents of the facility SPCC Plan. *[§112.7(f)]*	☐
A person who reports to facility management is designated and accountable for discharge prevention. *[§112.7(f)]* Name/Title:_____	☐
Discharge prevention briefings are conducted for oil-handling personnel annually to assure adequate understanding of the SPCC Plan for that facility. Such briefings highlight and describe past reportable discharges or failures, malfunctioning components, and any recently developed precautionary measures. *[§112.7(f)]* [See Oil-handling Personnel Training and Briefing Log in Attachment 3.4]	☐

4. Security (excluding oil production facilities) §112.7(g):

Table G-6 Implementation and Description of Security Measures	
Security measures are implemented at this facility to prevent unauthorized access to oil handling, processing, and storage area.	☐
The following is a description of how you secure and control access to the oil handling, processing and storage areas; secure master flow and drain valves; prevent unauthorized access to starter controls on oil pumps; secure out-of-service and loading/unloading connections of oil pipelines; address the appropriateness of security lighting to both prevent acts of vandalism and assist in the discovery of oil discharges:	

5. Emergency Procedures and Notifications (§112.7(a)(3)(iv) and 112.7(a)(5)):

Table G-7 Description of Emergency Procedures and Notifications
The following is a description of the immediate actions to be taken by facility personnel in the event of a discharge to navigable waters or adjoining shorelines *[§112.7(a)(3)(iv) and 112.7(a)(5)]*:

6. Contact List (§112.7(a)(3)(vi)):

Table G-8 Contact List	
Contact Organization / Person	**Telephone Number**
National Response Center (NRC)	1-800-424-8802
Cleanup Contractor(s)	
Key Facility Personnel	
Designated Person Accountable for Discharge Prevention:	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
	Office:
	Emergency:
State Oil Pollution Control Agencies	
Other State, Federal, and Local Agencies	
Local Fire Department	
Local Police Department	
Hospital	
Other Contact References (e.g., downstream water intakes or neighboring facilities)	

7. NRC Notification Procedure (§112.7(a)(4) and (a)(5)):

Table G-9 NRC Notification Procedure	
In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information identified in Attachment 4 will be provided to the National Response Center immediately following identification of a discharge to navigable waters or adjoining shorelines [See Discharge Notification Form in Attachment 4]: *[§112.7(a)(4)]*	☐
• The exact address or location and phone number of the facility; • Date and time of the discharge; • Type of material discharged; • Estimate of the total quantity discharged; • Estimate of the quantity discharged to navigable waters; • Source of the discharge; • Description of all affected media; • Cause of the discharge; • Any damages or injuries caused by the discharge; • Actions being used to stop, remove, and mitigate the effects of the discharge; • Whether an evacuation may be needed; and • Names of individuals and/or organizations who have also been contacted.	

8. SPCC Spill Reporting Requirements (Report within 60 days) (§112.4):

Submit information to the EPA Regional Administrator (RA) and the appropriate agency or agencies in charge of oil pollution control activities in the State in which the facility is located within 60 days from one of the following discharge events:

- A single discharge of more than 1,000 U.S. gallons of oil to navigable waters or adjoining shorelines or
- Two discharges to navigable waters or adjoining shorelines each more than 42 U.S. gallons of oil occurring within any twelve month period

You must submit the following information to the RA:

(1) Name of the facility;
(2) Your name;
(3) Location of the facility;
(4) Maximum storage or handling capacity of the facility and normal daily throughput;
(5) Corrective action and countermeasures you have taken, including a description of equipment repairs and replacements;
(6) An adequate description of the facility, including maps, flow diagrams, and topographical maps, as necessary;
(7) The cause of the reportable discharge, including a failure analysis of the system or subsystem in which the failure occurred; and
(8) Additional preventive measures you have taken or contemplated to minimize the possibility of recurrence
(9) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or discharge

* * * * *

NOTE: Complete one of the following sections (A, B or C)

as appropriate for the facility type.

A. Onshore Facilities (excluding production) (§§112.8(b) through (d), 112.12(b) through (d)):

The owner or operator must meet the general rule requirements as well as requirements under this section. Note that not all provisions may be applicable to all owners/operators. For example, a facility may not maintain completely buried metallic storage tanks installed after January 10, 1974, and thus would not have to abide by requirements in §§112.8(c)(4) and 112.12(c)(4), listed below. In cases where a provision is not applicable, write "N/A".

Table G-10 General Rule Requirements for Onshore Facilities	
Drainage from diked storage areas is restrained by valves to prevent a discharge into the drainage system or facility effluent treatment system, except where facility systems are designed to control such discharge. Diked areas may be emptied by pumps or ejectors that must be manually activated after inspecting the condition of the accumulation to ensure no oil will be discharged. *[§§112.8(b)(1) and 112.12(b)(1)]*	☐
Valves of manual, open-and-closed design are used for the drainage of diked areas. *[§§112.8(b)(2) and 112.12(b)(2)]*	☐
The containers at the facility are compatible with materials stored and conditions of storage such as pressure and temperature. *[§§112.8(c)(1) and 112.12(c)(1)]*	☐
Secondary containment for the bulk storage containers (including mobile/portable oil storage containers) holds the capacity of the largest container plus additional capacity to contain precipitation. Mobile or portable oil storage containers are positioned to prevent a discharge as described in §112.1(b). *[§112.6(a)(3)(ii)]*	☐
If uncontaminated rainwater from diked areas drains into a storm drain or open watercourse the following procedures will be implemented at the facility: *[§§112.8(c)(3) and 112.12(c)(3)]*	
• Bypass valve is normally sealed closed	☐
• Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters or adjoining shorelines	☐
• Bypass valve is opened and resealed under responsible supervision	☐
• Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐
For completely buried metallic tanks installed on or after January 10, 1974 at this facility *[§§112.8(c)(4) and 112.12(c)(4)]*:	
• Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions.	☐
• Regular leak testing is conducted.	☐
For partially buried or bunkered metallic tanks *[§112.8(c)(5) and §112.12(c)(5)]*:	
• Tanks have corrosion protection with coatings or cathodic protection compatible with local soil conditions.	☐
Each aboveground bulk container is tested or inspected for integrity on a regular schedule and whenever material repairs are made. Scope and frequency of the inspections and inspector qualifications are in accordance with industry standards. Container supports and foundations are regularly inspected. [See Inspection Log and Schedule and Bulk Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.8(c)(6) and §112.12(c)(6)(i)]*	☐
Outsides of bulk storage containers are frequently inspected for signs of deterioration, discharges, or accumulation of oil inside diked areas. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(c)(6) and 112.12(c)(6)]*	☐
For bulk storage containers that are subject to 21 CFR part 110 which are shop-fabricated, constructed of austenitic stainless steel, elevated and have no external insulation, formal visual inspection is conducted on a regular schedule. Appropriate qualifications for personnel performing tests and inspections are documented. [See Inspection Log and Schedule and Bulk	☐

Table G-10 General Rule Requirements for Onshore Facilities	
Storage Container Inspection Schedule in Attachments 3.1 and 3.2] *[§112.12(c)(6)(ii)]*	
Each container is provided with a system or documented procedure to prevent overfills for the container. Describe:	☐
Liquid level sensing devices are regularly tested to ensure proper operation [See Inspection Log and Schedule in Attachment 3.1]. *[§112.6(a)(3)(iii)]*	☐
Visible discharges which result in a loss of oil from the container, including but not limited to seams, gaskets, piping, pumps, valves, rivets, and bolts are promptly corrected and oil in diked areas is promptly removed. *[§§112.8(c)(10) and 112.12(c)(10)]*	☐
Aboveground valves, piping, and appurtenances such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces are inspected regularly. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐
Integrity and leak testing are conducted on buried piping at the time of installation, modification, construction, relocation, or replacement. [See Inspection Log and Schedule in Attachment 3.1] *[§§112.8(d)(4) and 112.12(d)(4)]*	☐

B. Onshore Oil Production Facilities (excluding drilling and workover facilities) (§112.9(b), (c), and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section. Note that not all provisions may be applicable to all owners/operators. In cases where a provision is not applicable, write "N/A".

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
At tank batteries, separation and treating areas, drainage is closed and sealed except when draining uncontaminated rainwater. Accumulated oil on the rainwater is returned to storage or disposed of in accordance with legally approved methods. *[§112.9(b)(1)]*	☐
Prior to drainage, diked areas are inspected and *[§112.9(b)(1)]*:	
• Retained rainwater is inspected to ensure that its presence will not cause a discharge to navigable waters	☐
• Bypass valve is opened and resealed under responsible supervision	☐
• Adequate records of drainage are kept [See Dike Drainage Log in Attachment 3.3]	☐
Field drainage systems and oil traps, sumps, or skimmers are inspected at regularly scheduled intervals for oil, and accumulations of oil are promptly removed [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(b)(2)]*	☐
The containers used at this facility are compatible with materials stored and conditions of storage. *[§112.9(c)(1)]*	☐
All tank battery, separation, and treating facility installations (except for flow-through process vessels) are constructed with a capacity to hold the largest single container plus additional capacity to contain rainfall. Drainage from undiked areas is safely confined in a catchment basin or holding pond. *[§112.9(c)(2)]*	☐
Except for flow-through process vessels, containers that are on or above the surface of the ground, including foundations and supports, are visually inspected for deterioration and maintenance needs on a regular schedule. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(c)(3)]*	☐
New and old tank batteries at this facility are engineered/updated in accordance with good engineering practices to prevent discharges including at least one of the following: (i) adequate container capacity to prevent overfill if regular pumping/gauging is delayed; (ii) overflow equalizing lines between containers so that a full container can overflow to an adjacent container; (iii) vacuum protection to prevent container collapse; or (iv) high level sensors to generate and transmit an alarm to the computer where the facility is subject to a computer production control system. *[§112.9(c)(4)]*	☐
Flow-through process vessels and associated components are:	
• Are constructed with a capacity to hold the largest single container plus additional capacity to contain rainfall. Drainage from undiked areas is safely confined in a catchment basin or holding pond; *[§112.9(c)(2)]* and	☐
• That are on or above the surface of the ground, including foundations and supports, are visually inspected for deterioration and maintenance needs on a regular schedule. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(c)(3)]*	☐
Or	
• Visually inspected and/or tested periodically and on a regular schedule for leaks, corrosion, or other conditions that could lead to a discharge to navigable waters; and	☐
• Corrective action or repairs are applied to flow-through process vessels and any associated components as indicated by regularly scheduled visual inspections, tests, or evidence of an oil discharge; and	☐
• Any accumulations of oil discharges associated with flow-through process vessels are promptly removed; and	☐

Table G-11 General Rule Requirements for Onshore Oil Production Facilities	
• Flow-through process vessels are provided with a secondary means of containment for the entire capacity of the largest single container and sufficient freeboard to contain precipitation within six months of a discharge from flow-through process vessels of more than 1,000 U.S. gallons of oil in a single discharge as described in §112.1(b), or a discharge more than 42 U.S. gallons of oil in each of two discharges as described in §112.1(b) within any twelve month period. *[§112.9(c)(5)]* *(Leave blank until such time that this provision is applicable.)*	☐
All aboveground valves and piping associated with transfer operations are inspected periodically and upon a regular schedule. The general condition of flange joints, valve glands and bodies, drip pans, pipe supports, pumping well polish rod stuffing boxes, bleeder and gauge valves, and other such items are included in the inspection. [See Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(1)]*	☐
An oil spill contingency plan and written commitment of resources are provided for flowlines and intra-facility gathering lines [See Oil Spill Contingency Plan and Checklist in Attachment 2 and Inspection Log and Schedule in Attachment 3.1] *[§112.9(d)(3)]* or Appropriate secondary containment and/or diversionary structures or equipment is provided for flowlines and intra-facility gathering lines to prevent a discharge to navigable waters or adjoining shorelines. The entire secondary containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from the pipe, will not escape the containment system before cleanup occurs.	☐ ☐
A flowline/intra-facility gathering line maintenance program to prevent discharges from each flowline has been established at this facility. The maintenance program addresses each of the following:	☐
• Flowlines and intra-facility gathering lines and associated valves and equipment are compatible with the type of production fluids, their potential corrosivity, volume, and pressure, and other conditions expected in the operational environment;	☐
• Flowlines, intra-facility gathering lines and associated appurtenances are visually inspected and/or tested on a periodic and regular schedule for leaks, oil discharges, corrosion, or other conditions that could lead to a discharge as described in §112.1(b). The frequency and type of testing allows for the implementation of a contingency plan as described under part 109 of this chapter.	☐
• Corrective action and repairs to any flowlines and intra-facility gathering lines and associated appurtenances as indicated by regularly scheduled visual inspections, tests, or evidence of a discharge.	☐
• Accumulations of oil discharges associated with flowlines, intra-facility gathering lines, and associated appurtenances are promptly removed. *[§112.9(d)(4)]*	☐
The following is a description of the flowline/intra-facility gathering line maintenance program implemented at this facility:	

C. Onshore Oil Drilling and Workover Facilities (§112.10(b), (c) and (d)):

The owner or operator must meet the general rule requirements as well as the requirements under this section.

Table G-12 General Rule Requirements for Onshore Oil Drilling and Workover Facilities	
Mobile drilling or worker equipment is positioned or located to prevent discharge as described in §112.1(b). *[§112.10(b)]*	☐
Catchment basins or diversion structures are provided to intercept and contain discharges of fuel, crude oil, or oily drilling fluids. *[§112.10(c)]*	☐
A blowout prevention (BOP) assembly and well control system was installed before drilling below any casing string or during workover operations. *[§112.10(d)]*	☐
The BOP assembly and well control system is capable of controlling any well-head pressure that may be encountered while the BOP assembly and well control system are on the well. *[§112.10(d)]*	☐

ATTACHMENT 1 – Five Year Review and Technical Amendment Logs

ATTACHMENT 1.1 – Five Year Review Log

I have completed a review and evaluation of the SPCC Plan for this facility, and will/will not amend this Plan as a result.

Table G-13 Review and Evaluation of SPCC Plan for Facility			
Review Date	Plan Amendment		Name and signature of person authorized to review this Plan
	Will Amend	Will Not Amend	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	
	☐	☐	

ATTACHMENT 1.2 – Technical Amendment Log

Any technical amendments to this Plan will be re-certified in accordance with Section I of this Plan template.

Table G-14 Description and Certification of Technical Amendments		
Review Date	Description of Technical Amendment	Name and signature of person certifying this technical amendment

ATTACHMENT 2 – Oil Spill Contingency Plan and Checklist

An oil spill contingency plan and written commitment of resources is required for:

- Flowlines and intra-facility gathering lines at oil production facilities and
- Qualified oil-filled operational equipment which has no secondary containment.

An oil spill contingency plan meeting the provisions of 40 CFR part 109, as described below, and a written commitment of manpower, equipment and materials required to expeditiously control and remove any quantity of oil discharged that may be harmful is attached to this Plan.	☐

Complete the checklist below to verify that the necessary operations outlined in 40 CFR part 109 - Criteria for State, Local and Regional Oil Removal Contingency Plans - have been included.

Table G-15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§109.5)[a]	
(a) Definition of the authorities, responsibilities and duties of all persons, organizations or agencies which are to be involved in planning or directing oil removal operations.	☐
(b) Establishment of notification procedures for the purpose of early detection and timely notification of an oil discharge including:	
(1) The identification of critical water use areas to facilitate the reporting of and response to oil discharges.	☐
(2) A current list of names, telephone numbers and addresses of the responsible persons (with alternates) and organizations to be notified when an oil discharge is discovered.	☐
(3) Provisions for access to a reliable communications system for timely notification of an oil discharge, and the capability of interconnection with the communications systems established under related oil removal contingency plans, particularly State and National plans (e.g., NCP).	☐
(4) An established, prearranged procedure for requesting assistance during a major disaster or when the situation exceeds the response capability of the State, local or regional authority.	☐
(c) Provisions to assure that full resource capability is known and can be committed during an oil discharge situation including:	
(1) The identification and inventory of applicable equipment, materials and supplies which are available locally and regionally.	☐
(2) An estimate of the equipment, materials and supplies which would be required to remove the maximum oil discharge to be anticipated.	☐
(3) Development of agreements and arrangements in advance of an oil discharge for the acquisition of equipment, materials and supplies to be used in responding to such a discharge.	☐
(d) Provisions for well defined and specific actions to be taken after discovery and notification of an oil discharge including:	
(1) Specification of an oil discharge response operating team consisting of trained, prepared and available operating personnel.	☐
(2) Predesignation of a properly qualified oil discharge response coordinator who is charged with the responsibility and delegated commensurate authority for directing and coordinating response operations and who knows how to request assistance from Federal authorities operating under existing national and regional contingency plans.	☐

Table G-15 Checklist of Development and Implementation Criteria for State, Local and Regional Oil Removal Contingency Plans (§109.5)[a]	
(3) A preplanned location for an oil discharge response operations center and a reliable communications system for directing the coordinated overall response operations.	☐
(4) Provisions for varying degrees of response effort depending on the severity of the oil discharge.	☐
(5) Specification of the order of priority in which the various water uses are to be protected where more than one water use may be adversely affected as a result of an oil discharge and where response operations may not be adequate to protect all uses.	☐
(6) Specific and well defined procedures to facilitate recovery of damages and enforcement measures as provided for by State and local statutes and ordinances.	☐

[a] The contingency plan must be consistent with all applicable state and local plans, Area Contingency Plans, and the National Contingency Plan (NCP).

ATTACHMENT 3 – Inspections, Dike Drainage and Personnel Training Logs

ATTACHMENT 3.1 – Inspection Log and Schedule

Table G-16 Inspection Log and Schedule

This log is intended to document compliance with §§112.6(a)(3)(iii), 112.8(c)(6), 112.8(d)(4), 112.9(b)(2), 112.9(c)(3), 112.9(d)(1), 112.9(d)(4), 112.12.(c)(6), and 112.12(d)(4), as applicable.

Date of Inspection	Container / Piping / Equipment	Describe Scope (or cite Industry Standard)	Observations	Name/ Signature of Inspector	Records maintained separately [a]
					☐
					☐
					☐
					☐
					☐

[a] Indicate in the table above if records of facility inspections are maintained separately at this facility.

ATTACHMENT 3.2 – Bulk Storage Container Inspection Schedule – onshore facilities (excluding production):

To comply with integrity inspection requirement for bulk storage containers, inspect/test each shop-built aboveground bulk storage container on a regular schedule in accordance with a recognized container inspection standard based on the minimum requirements in the following table.

Table G-17 Bulk Storage Container Inspection Schedule	
Container Size and Design Specification	**Inspection requirement**
Portable containers (including drums, totes, and intermodal bulk containers (IBC))	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas
55 to 1,100 gallons with sized secondary containment	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas plus any annual inspection elements per industry inspection standards
1,101 to 5,000 gallons with sized secondary containment and a means of leak detection[a]	
1,101 to 5,000 gallons with sized secondary containment and no method of leak detection[a]	Visually inspect monthly for signs of deterioration, discharges or accumulation of oil inside diked areas, plus any annual inspection elements and other specific integrity tests that may be required per industry inspection standards

[a] Examples of leak detection include, but are not limited to, double-walled tanks and elevated containers where a leak can be visually identified.

ATTACHMENT 3.3 – Dike Drainage Log

Table G-18 Dike Drainage Log

Date	Bypass valve sealed closed	Rainwater inspected to be sure no oil (or sheen) is visible	Open bypass valve and reseal it following drainage	Drainage activity supervised	Observations	Signature of Inspector
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		
	☐	☐	☐	☐		

ATTACHMENT 3.4 – Oil-handling Personnel Training and Briefing Log

Table G-19 Oil-Handling Personnel Training and Briefing Log		
Date	Description / Scope	Attendees

ATTACHMENT 4 – Discharge Notification Form

In the event of a discharge of oil to navigable waters or adjoining shorelines, the following information will be provided to the National Response Center [also see the notification information provided in Section 7 of the Plan]:

Table G-20 Information provided to the National Response Center in the Event of a Discharge			
Discharge/Discovery Date		Time	
Facility Name			
Facility Location (Address/Lat-Long/Section Township Range)			
Name of reporting individual		Telephone #	
Type of material discharged		Estimated total quantity discharged	Gallons/Barrels
Source of the discharge		Media affected	☐ Soil ☐ Water (specify) _____ ☐ Other (specify) _____
Actions taken			
Damage or injuries	☐ No ☐ Yes (specify)	Evacuation needed?	☐ No ☐ Yes (specify)
Organizations and individuals contacted	☐ National Response Center 800-424-8802 Time _____		
	☐ Cleanup contractor (Specify) Time _____		
	☐ Facility personnel (Specify) Time _____		
	☐ State Agency (Specify) Time _____		
	☐ Other (Specify) Time _____		

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Part IV

Department of Labor

Delegation of Authorities and Assignment of Responsibilities; Notices

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 10–2009]

Delegation of Authorities and Assignment of Responsibilities to the Director, Office of Workers' Compensation Programs

1. *Purpose.* To delegate authorities and assign responsibilities to the Director, Office of Workers' Compensation Programs

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the Authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary's Order 1–2008 (Employment Standards Administration) is hereby canceled. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Orders 1–2008 or the Employment Standards Administration are amended to refer to this Order and/or Secretary's Orders governing the Office of Federal Contract Compliance Programs, the Wage and Hour Division or the Office of Labor-Management Standards, as appropriate.

4. *Background.* This Order is occasioned by the November 8, 2009 dissolution of the Employment Standards Administration (ESA) into its four constituent components: Wage and Hour Division; Office of Federal Contract Compliance Programs; Office of Workers' Compensation Programs; and Office of Labor-Management Standards. This Order cancels Secretary's Order 1–2008 and constitutes the Secretary's Order devolving certain authorities and responsibilities of ESA to the Office of Workers' Compensation Programs (OWCP). Specifically, this Order delegates authorities and assigns responsibilities to the Director, OWCP. The authorities and responsibilities specified below are consistent with the ESA redelegations and distributions of authorities and responsibilities to OWCP in effect at the time of this dissolution.

5. *Delegation of Authority and Assignment of Responsibility.*

A. *The Director, Office of Workers' Compensation Programs* is hereby delegated authority for carrying out the policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor, under the designated provisions of the following statutes:

(1) The Federal Employees' Compensation Act, as amended and extended, 5 U.S.C. 8101 *et seq.,* except 5 U.S.C. 8149, as it pertains to the Employees' Compensation Appeals Board.

(2) The War Hazards Compensation Act, as amended, 42 U.S.C. 1701, *et seq.*

(3) War Claims Act of 1948, as amended, 50 U.S.C. App 2003, *et seq.*

(4) The Longshore and Harbor Workers' Compensation Act, as amended and extended, 33 U.S.C. 901 *et seq.,* except: 33 U.S.C. 919(d), with respect to administrative law judges in the Office of Administrative Law Judges; 33 U.S.C. 921(b), as it applies to the Benefits Review Board; and activities pursuant to 33 U.S.C. 941, assigned to the Assistant Secretary for Occupational Safety and Health.

(5) The Black Lung Benefits Act, as amended, 30 U.S.C. 901 *et seq.,* including 26 U.S.C. 9501, except: 33 U.S.C. 919(d) as incorporated by 30 U.S.C. 932(a), with respect to administrative law judges in the Office of Administrative Law Judges; and 33 U.S.C. 921(b) as incorporated by 30 U.S.C. 932(a), as it applies to the Benefits Review Board.

(6) The Energy Employees Occupational Illness Compensation Program Act of 2000, as amended, 42 U.S.C. 7384, *et seq.,* except 42 U.S.C. 7385s–15 as it pertains to the Office of the Ombudsman, and Executive Order 18719 (''Providing Compensation to America's Nuclear Weapons Workers'') of December 7, 2000.

(7) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those imposed by the statutes listed under subparagraphs (1)–(6) of this paragraph, as directed by the Secretary.

B. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order limits or modifies the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 01–2002 (September 24, 2002) or its extensions or successor orders.

C. Except as expressly provided, nothing in this Order limits or modifies the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This order is effective November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. E9–27336 Filed 11–12–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 7–2009]

Delegation of Authority and Assignment of Responsibilities to the Director, Office of Federal Contract Compliance Programs

1. *Purpose.* To delegate authorities and assign responsibilities to the Director, Office of Federal Contract Compliance Programs.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary's Order 1–2008 (Employment Standards) is hereby canceled. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Orders 1–2008 or the Employment Standards Administration are amended to refer to this Order and/or Secretary's Orders governing the Office of Workers' Compensation Programs, the Wage and Hour Division or the Office of Labor-Management Standards, as appropriate.

4. *Background.* This Order is occasioned by the November 8, 2009 dissolution of the Employment Standards Administration (ESA) into its

four constituent components: Wage and Hour Division; Office of Federal Contract Compliance Programs; Office of Workers' Compensation Programs; and the Office of Labor-Management Standards. This Order cancels Secretary's Order 1–2008 and constitutes the Secretary's Order devolving certain authorities and responsibilities of ESA to the Office of Federal Contract Compliance Programs (OFCCP). Specifically, this Order delegates authorities and assigns responsibilities to the Director, OFCCP. The authorities and responsibilities specified below are consistent with the current ESA redelegation of authority and assignment of responsibility to OFCCP in effect at the time of this dissolution.

5. *Delegation of Authority and Assignment of Responsibility.*

A. *The Director, Office of Federal Contract Compliance Programs* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the standards, policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following laws:

(1) The affirmative action provisions of the Vietnam Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4212(a)(1), 4212(a)(2)(A), and 4212(b) (2004) and 38 U.S.C. 4212(a) and (b)(2002), subject to (i) Secretary's Order 3–2009, which remains in effect, and which, in part, delegates authority and assigns responsibility to the Assistant Secretary for Employment and Training for administering the requirements regarding priority in referral to Federal contractor employment openings and disseminating lists of Federal contractor employment openings under the Vietnam Veterans' Readjustment Assistance Act, 38 U.S.C. 4212(a)(2)(B) and (C); and (ii) Secretary's Order 3–2004, which remains in effect, and which, in part, delegates authority and assigns responsibility to the Assistant Secretary for Veterans' Employment and Training for administering the Federal contractor reporting requirements under the Vietnam Veterans' Readjustment Assistance Act, 38 U.S.C. 4212(d), and determining compliance of State agencies pursuant to 20 CFR 1001.130 regarding priority in referral to Federal contractor employment listings and disseminating lists of Federal contractor employment openings under the Vietnam Veterans' Readjustment Assistance Act, 38 U.S.C. 4212(a)(2)(B) and (C).

(2) Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and Executive Order 11758 (''Delegating Authority of the President under the Rehabilitation Act of 1973'') of January 15, 1974.

(3) Executive Order 11246 ''Equal Employment Opportunity'' (September 24, 1965), as amended.

(4) Title I of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 *et seq.,* and the regulations at 41 CFR part 60–742.

(5) The employment eligibility and recordkeeping provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1324A(b)(3).

(6) Executive Order 13496 of January 30, 2009, ''Notification of Employee Rights under Federal Labor Laws.''

(7) Such additional Federal laws that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(6) of this paragraph, as directed by the Secretary.

B. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1–2002 (September 24, 2002).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be re-delegated.

8. *Effective Date.* This order shall become effective on November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. E9–27337 Filed 11–12–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 8–2009]

Delegation of Authorities and Assignment of Responsibilities to the Director, Office of Labor-Management Standards

1. *Purpose.* To delegate authorities and assign responsibilities to the Director, Office of Labor-Management Standards.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 (Establishment of Department; Secretary; Seal); Reorganization Plan No. 6 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary's Order 1–2008 (Employment Standards) is hereby canceled. Secretary's Order 9–75 is superseded to the extent that it is inconsistent with Section 7 of this Order. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Orders 1–2008 or the Employment Standards Administration are amended to refer to this Order and/or Secretary's Orders governing the Office of Workers' Compensation Programs, Office of Federal Contract Compliance Programs, or the Wage and Hour Division, as appropriate.

4. *Background.* This Order is occasioned by the November 8, 2009 dissolution of the Employment Standards Administration (ESA) into its four constituent components: Wage and Hour Division; Office of Federal Contract Compliance Programs; Office of Workers' Compensation Programs; and Office of Labor-Management Standards. This Order cancels Secretary's Order 1–2008 and constitutes the Secretary's Order devolving certain authorities and responsibilities of ESA to the Office of Labor-Management Standards (OLMS). Specifically, this Order delegates authorities and assigns responsibilities to the Director, OLMS. The authorities and responsibilities specified below are consistent with the ESA redelegations and distributions of authorities and responsibilities to OLMS in effect at the time of this dissolution.

5. *Delegation of Authority and Assignment of Responsibilities:*

A. *The Director, Office of Labor-Management Standards* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards,

and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Labor-Management Reporting and Disclosure Act of 1959, as amended, 29 U.S.C. 401 *et seq.* If, in the course of investigations under the Labor-Management Reporting and Disclosure Act, there appear to be indications of organized crime and labor racketeering, the Director of the Office of Labor-Management Standards shall promptly notify the Inspector General, who also has statutory authority to investigate such issues. The Inspector General shall have the power to assume the lead in further investigative activities arising from such case with respect to issues involving organized crime and labor racketeering.

(2) Section 701 (Standards of Conduct for Labor Organizations) of the Civil Service Reform Act of 1978, 5 U.S.C. 7120; Section 1017 of the Foreign Service Act of 1980, 22 U.S.C. 4117; Section 220(a)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1); and the regulations pertaining to such sections at 29 CFR Parts 457–459.

(3) Section 1209 of the Postal Reorganization Act of 1970, 39 U.S.C. 1209.

(4) The employee protection provisions of the Federal Transit law, as codified at 49 U.S.C. 5333(b), and related provisions.

(5) The employee protection provisions certified under Section 405(a), (b), (c), and (e) of the Rail Passenger Service Act of 1970, 45 U.S.C. 565(a), (b), (c), and (e).

(6) Executive Order 13496, (''the Notification of Employee Rights Under Federal Labor Laws'') of January 30, 2009.

(7) Section 211(a) of the Labor Management Relations Act, 1947, 29 U.S.C. 181(a) (''Compilation of Collective Bargaining Agreements, etc.; Use of Data'').

(8) Such additional Federal acts that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)–(7) of this paragraph, as directed by the Secretary.

B. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 1–2002.

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This order shall become effective on November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. E9–27338 Filed 11–12–09; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Office of the Secretary

[Secretary's Order 9–2009]

Delegation of Authorities and Assignment of Responsibilities to the Administrator, Wage and Hour Division

1. *Purpose.* To delegate authorities and assign responsibilities to the Administrator, Wage and Hour Division.

2. *Authorities.* This Order is issued under the authority of 5 U.S.C. 301 (Departmental Regulations); 29 U.S.C. 551 *et seq.* (Establishment of Department; Secretary; Seal); and Reorganization Plan No. 6 of 1950 (5 U.S.C. App. 1 Reorg. Plan 6 1950); and the authorities cited in Section 5 of this Order.

3. *Directives Affected.* Secretary's Order 1–2008 (Employment Standards) is hereby canceled. All other Secretary's Orders and DOL directives (including policies and guidance) which reference Secretary's Orders 1–2008 or the Employment Standards Administration are amended to refer to this Order and/or Secretary's Orders governing the Office of Workers' Compensation Programs, Office of Federal Contract Compliance Programs, or the Office of Labor-Management Standards, as appropriate.

4. *Background.* This Order is occasioned by the November 8, 2009 dissolution of the Employment Standards Administration (ESA) into its four constituent components: The Wage and Hour Division (WHD); the Office of Federal Contract Compliance Programs; the Office of Workers' Compensation Programs; and the Office of Labor-Management Standards. This Order cancels Secretary's Order 1–2008 and constitutes the Secretary's Order devolving certain authorities and responsibilities of ESA to WHD. Specifically, this Order delegates authorities and assigns responsibilities to the Administrator, WHD. The authorities and responsibilities specified below are consistent with the current ESA redelegation and distribution of authorities and responsibilities to WHD in effect at the time of this dissolution.

5. *Delegations of Authority and Assignment of Responsibility*

A. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility, except as hereinafter provided, for carrying out the employment standards, labor standards, and labor-management standards policies, programs, and activities of the Department of Labor, including those functions to be performed by the Secretary of Labor under the designated provisions of the following statutes:

(1) The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201 *et seq.* (FLSA), including the issuance thereunder of child labor hazardous occupation orders and other regulations concerning child labor standards, and subpoena authority under 29 U.S.C. 209. Authority and responsibility for the Equal Pay Act, Section 6(d) of the FLSA, were transferred to the Equal Employment Opportunity Commission on July 1, 1979, pursuant to the President's Reorganization Plan No. 1 of February 1978, set out in the Appendix to Title 5, Government Organization and Employees.

(2) The Walsh-Healey Public Contracts Act of 1936, as amended, 41 U.S.C. 35 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health or the Assistant Secretary for Mine Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 39.

(3) The McNamara-O'Hara Service Contract Act of 1965, as amended, 41

U.S.C. 351 *et seq.*, except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health. The authority of the Administrator, WHD includes subpoena authority under 41 U.S.C. 353(a).

(4) The Davis-Bacon Act, as amended, 40 U.S.C. 3141 *et seq.*, and any laws now existing or subsequently enacted, providing for prevailing wage findings by the Secretary in accordance with or pursuant to the Davis-Bacon Act; the Copeland Act, 40 U.S.C. 3145; Reorganization Plan No. 14 of 1950; and the Tennessee Valley Authority Act, 16 U.S.C. 831.

(5) The Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. 3701 *et seq.,* except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(6) Title III of the Consumer Credit Protection Act, 15 U.S.C. 1671 *et seq.*

(7) The labor standards provisions contained in Sections 5(i), (m), (n) and 7(g) of the National Foundation for the Arts and the Humanities Act, 20 U.S.C. 954(i) (m), (n) and 956(g), except those provisions relating to safety and health delegated to the Assistant Secretary for Occupational Safety and Health.

(8) The Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1801 *et seq.,* including subpoena authority under 29 U.S.C. 1862(b).

(9) The Employee Polygraph Protection Act of 1988, 29 U.S.C. 2001 *et seq.,* including subpoena authority under 29 U.S.C. 2004(b).

(10) The following provisions of the Immigration and Nationality Act of 1952, as amended, 8 U.S.C. 1101 *et seq.* (INA): Section 258, 8 U.S.C. 1288(c)(4)(B)–(F), relating to the enforcement of the attestations required by employers pertaining to the employment of nonimmigrant longshore workers (D visas); Section 212(n)(2), (t)(3), 8 U.S.C. 1182(n)(2), (t)(3); relating to the enforcement of labor condition applications for employment of nonimmigrant professionals (H–1B, H–1B1, and E–3 visas); Section 212(m)(2)(E)(ii) through (v), 8 U.S.C. 1182(m)(2)(E)(ii) through (v), relating to the complaint, investigation, and penalty provisions of the attestation process for users of nonimmigrant registered nurses (H–1C Visas); Section 218(g)(2), 8 U.S.C. 1188(g)(2), relating to assuring employer compliance with terms and conditions of employment under the temporary alien agricultural labor certification program (H–2A visas); Section 214(c)(14), 8 U.S.C. 1184(c)(14), relating to assuring employer compliance with the terms and conditions of employment under the temporary alien labor certification program in occupations other than agriculture or registered nursing (H–2B visas); and Section 274A(b)(3), 8 U.S.C. 1324A(b)(3), relating to employment eligibility verification and related recordkeeping.

(11) The Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.* (FMLA), including subpoena authority under 29 U.S.C. 2616.

(12) The Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 651 *et seq.* (OSH Act), to conduct inspections and investigations, issue administrative subpoenas, issue citations, assess and collect penalties, and enforce any other remedies available under the statute, and to develop and issue compliance interpretations under the statute, with regard to the standards on:

(a) Field sanitation, 29 CFR 1928.110; and

(b) temporary labor camps, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in ''agricultural employment'' within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that the Assistant Secretary for Occupational Safety and Health retains enforcement responsibility over temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

The authority of the Administrator, WHD under the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps does not include any other agency authorities or responsibilities, such as rulemaking authority. Such authorities under the statute are retained by the Assistant Secretary for Occupational Safety and Health.

Moreover, nothing in this Order shall be construed as derogating from the right of States operating OSHA-approved State plans under 29 U.S.C. 667 to continue to enforce field sanitation and temporary labor camp standards if they so choose. The Assistant Secretary for Occupational Safety and Health retains the authority to monitor the activity of such States with respect to field sanitation and temporary labor camps.

(13) Executive Order 13,495 (''Nondisplacement of Qualified Workers Under Service Contracts'') of January 30, 2009.

(14) Such additional Federal laws that from time to time may assign to the Secretary or the Department duties and responsibilities similar to those listed under subparagraphs (1)—(13) of this paragraph, as directed by the Secretary.

B. *The Administrator, Wage and Hour Division* is hereby delegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

C. *The Wage and Hour Regional Administrators* are hereby redelegated authority and assigned responsibility to issue administrative subpoenas under Section 9 of the Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 209; Section 5 of the Walsh-Healey Public Contracts Act, as amended, 41 U.S.C. 39; Section 4(a) of the McNamara-O'Hara Service Contract Act, as amended, 41 U.S.C. 353(a); Section 512(b) of the Migrant and Seasonal Agricultural Worker Protection Act of 1983, as amended, 29 U.S.C. 1862(b); Section 5(b) of the Employee Polygraph Protection Act of 1988, 29 U.S.C. 2004(b); Section 106 of the Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2616; and Section 8(b) of the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. 657(b), with respect to the authority delegated by this Order.

D. *The Administrator, Wage and Hour Division and the Assistant Secretary for Occupational Safety and Health* are directed to confer regularly on enforcement of the Occupational Safety and Health Act with regard to the standards on field sanitation and temporary labor camps (see section 7.a. (12) of this Order), and to enter into any memoranda of understanding which may be appropriate to clarify questions of coverage which arise in the course of such enforcement.

E. *The Solicitor of Labor* is delegated authority and assigned responsibility for providing legal advice and assistance to all officers of the Department relating to the administration of the statutory provisions, regulations, and Executive Orders listed above. The bringing of legal proceedings under those authorities, the representation of the Secretary and/or other officials of the Department of Labor, and the determination of whether such proceedings or representations are appropriate in a given case, are delegated exclusively to the Solicitor.

6. *Reservation of Authority and Responsibility.*

A. The submission of reports and recommendations to the President and the Congress concerning the administration of the statutory provisions and Executive Orders listed above is reserved to the Secretary.

B. Nothing in this Order shall limit or modify the delegation of authority and assignment of responsibility to the Administrative Review Board by Secretary's Order 01–2002 (September 24, 2002).

C. Except as expressly provided, nothing in this Order shall limit or modify the provisions of any other Order, including Secretary's Order 4–2006 (Office of Inspector General).

7. *Redelegation of Authority.* Except as otherwise provided by law, all of the authorities delegated in this Order may be redelegated.

8. *Effective Date.* This order shall become effective on November 8, 2009.

Dated: November 6, 2009.

Hilda L. Solis,

Secretary of Labor.

[FR Doc. E9–27339 Filed 11–12–09; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Friday,
November 13, 2009

Part V

The President

Notice of November 12, 2009—Continuation of the National Emergency With Respect to Iran

Federal Register
Vol. 74, No. 218
Friday, November 13, 2009

Presidential Documents

Title 3—

The President

Notice of November 12, 2009

Continuation of the National Emergency With Respect To Iran

On November 14, 1979, by Executive Order 12170, the President declared a national emergency with respect to Iran, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the situation in Iran. Because our relations with Iran have not yet returned to normal, and the process of implementing the January 19, 1981, agreements with Iran is still underway, the national emergency declared on November 14, 1979, must continue in effect beyond November 14, 2009. Therefore, consistent with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year this national emergency with respect to Iran.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
November 12, 2009.

[FR Doc. E9–27536
Filed 11–12–09; 12:30 pm]
Billing code 3195–W9–P

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Proclaiming Casimir Pulaski to be an honorary citizen of the United States posthumously. (Nov. 6, 2009; 123 Stat. 2999)

S. 832/P.L. 111–95

To amend title 36, United States Code, to grant a Federal charter to the Military Officers Association of America, and for other purposes. (Nov. 6, 2009; 123 Stat. 3001)

S. 1694/P.L. 111–96

To allow the funding for the interoperable emergency communications grant program established under the Digital Television Transition and Public Safety Act of 2005 to remain available until expended through fiscal year 2012, and for other purposes. (Nov. 6, 2009; 123 Stat. 3005)

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