



Federal Register

2-11-10

Vol. 75 No. 28

Pages 6813-6838

Thursday

Feb. 11, 2010



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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2006-0569; FRL-9112-1]

Approval of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Governor of New Mexico on May 24, 2006. The revisions address Title 20 of the New Mexico Administrative Code, Chapter 11, Part 102 (denoted 20.11.102 NMAC), which apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC. We are approving these revisions in accordance with the requirements of section 110 of the Clean Air Act (the Act).

DATES: The Direct final rule will be effective April 12, 2010 without further notice unless EPA receives adverse comments by March 15, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit comments, identified by Docket ID number EPA-R06-OAR-2006-0569, by one of the following methods:

- *Federal Rulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions.
- *U.S. EPA Region 6 "Contact Us" Web site:* <http://epa.gov/region6/r6coment.htm>. Please click on "6PD" (Multimedia) and select "Air" before submitting comments.

- *E-mail:* Mr. Guy Donaldson at donaldson.guy@epa.gov. Please also send a copy by email to the persons listed in the **FOR FURTHER INFORMATION CONTACT** section below.

- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), at fax number 214-665-7242.

- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays except legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Please include the text "Public comment on Docket ID number EPA-R06-OAR-2006-0569" in the subject line of the first page of your comments. 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 the disclosure of which is restricted by statute. Do not submit information through <http://www.regulations.gov> or e-mail that you consider to be CBI or otherwise protected from disclosure. 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 Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a fee of 15 cents per page for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection (during official business hours by appointment) at the City of Albuquerque, Environmental Health Department, One Civic Plaza, Albuquerque, New Mexico 87102.

FOR FURTHER INFORMATION CONTACT: Inquiries on this rulemaking should be directed to Ms. Carrie Paige, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6521; fax number 214-665-7263; e-mail address paige.carrie@epa.gov or Mr. Bill Deese, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-7253; fax number 214-665-7263; e-mail address deese.william@epa.gov.

SUPPLEMENTARY INFORMATION: In this document, “we,” “our,” and “us” means EPA.

Outline

- I. What Action Is EPA Taking?
- II. Background
- III. Summary of Changes to the New Mexico SIP
- IV. Final Action
- V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

Today we are approving revisions to the New Mexico SIP, submitted by the Governor of New Mexico on May 24, 2006. The revisions address 20.11.102 NMAC, which apply to the Oxygenated Fuels program in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC; the deletion of an obsolete procedures manual and references to it; and the addition of language from the deleted procedures manual to address inventory, recordkeeping, sampling and analysis procedures, and enforcement. We are approving these revisions in accordance with the requirements of section 110 of the Act.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on April 12, 2010 without further notice unless we receive relevant adverse comment by March 15, 2010. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. Background

The SIP is a set of air pollution regulations, control strategies, and technical analyses developed by the state to ensure that the state meets the National Ambient Air Quality Standards

(NAAQS). These ambient standards are established under section 109 of the Act and they currently address six criteria pollutants: carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter, and sulfur dioxide. The SIP is required by Section 110 of the Act and can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

The Albuquerque/Bernalillo County area was designated as a moderate nonattainment area for carbon monoxide (CO) on November 6, 1991 (see 56 FR 56694). As a moderate nonattainment area for CO, the area had to meet several new requirements, one of which was to implement an oxygenated fuels (oxyfuels) program, to reduce emissions of CO in automobile exhaust. The Albuquerque/Bernalillo County area oxyfuels program was submitted by the state and subsequently approved by EPA on November 29, 1993 (58 FR 62535). On April 14, 1995, the Governor of New Mexico submitted a request to EPA to redesignate to attainment the Albuquerque/Bernalillo County CO nonattainment area, which we approved on June 13, 1996 (61 FR 29970). On July 21, 2005,¹ we approved revisions to the New Mexico SIP pertaining to the second 10-year carbon monoxide (CO) maintenance plan for the Albuquerque/Bernalillo County area, including revisions to 20.11.102 NMAC, which address the oxyfuels program.

The May 24, 2006 submittal incorporates additional revisions to 20.11.102 NMAC. The rules in this submittal were promulgated in compliance with the NM Air Quality Control Act and Albuquerque/Bernalillo County Air Quality Control Board (AQCB) ordinances, published in the New Mexico Register, the official state publication for rulemaking actions, and submitted in accordance with the requirements in 40 CFR part 51. For more detail, see the 2006 submittal in the docket for this rulemaking and our Technical Support Document (TSD), also in the docket.

III. Summary of Changes to the New Mexico SIP

A. 20.11.102.2, Scope

Revisions to this section include nonsubstantive revisions and the inclusion of language that excepts Indian lands from the scope of the rule. This exception is appropriate as neither

the City of Albuquerque nor Bernalillo County have jurisdiction over Indian lands.

B. 20.11.102.3, Statutory Authority

Revisions to this section include clarifying edits and corrections to references to state and county rules that provide authority to adopt rules. These revisions are not substantive and update statutory and regulatory authority provisions.

C. 20.11.102.7, Definitions

Revisions to this section include clarifying edits, inserting the correct formula for the molecular composition of ethanol, and removing a reference to the oxygenated fuels procedures manual. Two definitions were added: “Vehicle pollution management division” (VPMD) and “Winter pollution season.” These revisions delete obsolete references, identify the department responsible for administering 20.11.102 NMAC, and identify the beginning and end dates for the annual winter pollution season.

D. 20.11.102.9, Savings Clause

Revisions to this section include clarifying edits and removing references to the oxygenated fuels procedures manual. These revisions delete obsolete references and are not substantive.

E. 20.11.102.10, Severability

Revisions to this section provide clarification and are not substantive.

F. 20.11.102.11, Documents

Revisions to this section provide clarification and are not substantive.

G. 20.11.102.12, Oxygenated Fuels

Revisions to this section include clarifying edits, identify the annual program duration as the winter pollution season, and delete a reference to methyl tertiary butyl ether (MTBE) as an oxygenate approved for use in the oxygenated fuels program. The removal of MTBE is not a weakening of the SIP, because the rule still specifies blending ethanol. This revision merely removes one of the choices available to comply with the rule.

Revisions to this section also add the headings of inventory, recordkeeping, sampling, analysis, and enforcement, and delete redundant text. The language inserted under each of these headings is taken from the old oxygenated fuels procedures manual; references to the procedures manual are being removed from the SIP in today’s action. The 2006 revisions also add labeling provided by the VPMD, rather than the retail facility, which provides for a standardized and

¹ See 70 FR 41963.

consistent labeling protocol. References to appropriate American Society for Testing and Materials (ASTM) methods are provided under the heading for analysis. A range of fines and schedule of corrective actions, including closure, is added under the heading for enforcement.

The revisions to 20.11.102.12 NMAC provide more specificity to the rules, thus strengthen the SIP.

H. 20.11.102.13, *Oxygenated Fuels Procedures Manual*

The 2006 revisions to 20.11.102.13 NMAC revoke the entire section. Language relevant to inventory, recordkeeping, sampling, analysis, and enforcement was taken from the old procedures manual and inserted into the SIP; see paragraph (G) above. By deleting references to the procedures manual and incorporating the specific headings and text into the SIP, the SIP becomes more comprehensive and straightforward.

I. 20.11.102.14, *Contingency Measure*

The current SIP provides for an increase in the minimum oxygen content of the fuel, should the area violate the CO NAAQS. The 2006 revisions delete this language and provide for an increase in the minimum oxygen content of the fuel, should the area exceed 85 percent of the CO NAAQS. Should the contingency measure be triggered, the oxygen content by weight will be increased from 2.7 percent to 3.0 percent. These revisions to 20.11.102.14 NMAC strengthen the SIP.

IV. Final Action

We are approving revisions to the New Mexico SIP submitted to EPA on May 24, 2006, which address 20.11.102 NMAC and apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify and strengthen 20.11.102 NMAC, sections 2, 3, 7, and 9–14. The revisions are consistent with the Act and EPA policy.

V. 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 April 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 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

Dated: January 15, 2010.

Al Armendariz,
Regional Administrator, Region 6.

■ 40 CFR part 52 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 GG—New Mexico

■ 2. The second table in § 52.1620(c) entitled, “EPA Approved Albuquerque/Bernalillo County, NM Regulations,” is amended by revising the entry for part 102 to read as follows:

§ 52.1620 Identification of plan.

*	*	*	*	*
(c)	*	*	*	
*	*	*	*	*

EPA APPROVED ALBUQUERQUE/BERNALILLO COUNTY, NM REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Explanation
*	*	*	*	*
New Mexico Administrative Code (NMAC) Title 20—Environment Protection, Chapter 11—Albuquerque/Bernalillo County Air Quality Control Board				
*	*	*	*	*
Part 102 (20.11.102 NMAC)	Oxygenated Fuels	12/11/2005	2/11/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010-2792 Filed 2-10-10; 8:45 am]
 BILLING CODE 6560-50-P

LEGAL SERVICES CORPORATION
45 CFR Parts 1609, 1610, and 1642

Attorneys' Fees; Fee-Generating Cases; Use of Non-LSC Funds, Transfers of LSC Funds, Program Integrity

AGENCY: Legal Services Corporation.
ACTION: Interim final rule and request for comments.

SUMMARY: LSC is repealing its regulatory prohibition on the claiming of, and the collection and retention of attorneys' fees pursuant to Federal and State law permitting or requiring the awarding of such fees. This action is taken in accordance with the elimination on the statutory prohibition on attorneys' fees in LSC's FY 2010 appropriation legislation. LSC is also moving provisions on accounting for and use of attorneys' fees and acceptance of reimbursements from clients from Part 1642 (which is being eliminated) to Part 1609 of LSC's regulations. LSC is also making technical changes to Part 1609 and Part 1610 of its regulations to remove cross references to the obsolete statutory and regulatory citations.

DATES: This Interim Final Rule is effective March 15, 2010. Comments on this Interim Final Rule are due on March 15, 2010.

ADDRESSES: Written comments may be submitted by mail, fax or e-mail to Mattie Cohan, Senior Assistant General Counsel, Office of Legal Affairs, Legal Services Corporation, 3333 K Street, NW., Washington, DC 20007; 202-295-1624 (ph); 202-337-6519 (fax); mcohan@lsc.gov.

FOR FURTHER INFORMATION CONTACT: Mattie Cohan, Senior Assistant General Counsel, 202-295-1624 (ph); mcohan@lsc.gov.

SUPPLEMENTARY INFORMATION:
Background

LSC's FY 1996 appropriation legislation provided that none of the funds appropriated in that Act could be used to provide financial assistance to any person or entity (which may be referred to in this section as a recipient) that claims (or whose employee claims), or collects and retains, attorneys' fees pursuant to any Federal or State law permitting or requiring the awarding of such fees. Section 504(a)(13), Public Law 104-134, 110 Stat. 1321 (April 26, 1996). Since appropriations legislation expires with the end of the Fiscal Year to which it applies, for the statutory restriction on attorneys' fees to remain in place by statute, it needed to be, and was, carried forth in each subsequent appropriation law by reference. See, e.g., Consolidated Appropriations Act, 2009, Public Law 111-8, 123 Stat. 524 (March 11, 2009).

LSC adopted regulations found in 1996 and 1997 which implemented the statutory attorneys' fees restriction. 45 CFR part 1642; 61 FR 45762 (August 29, 1996); 62 FR 25862 (May 12, 1997). The attorneys' fees regulation restates the basic prohibition on claiming or collecting and retaining attorneys' fees, providing that except as permitted by § 1642.4 (providing exceptions cases filed prior to the prohibition and for cases undertaken by private attorneys providing pro bono services in connection with a recipient's private attorney involvement program), no recipient or employee of a recipient may claim, or collect and retain attorneys' fees in any case undertaken on behalf of a client of the recipient. 46 CFR 1642.3. The regulation provides further

guidance to recipients by, among other things, providing a regulatory definition of attorneys' fees; setting forth rules for the applicability of the restriction to private attorneys providing legal assistance to a recipient's private attorney involvement program; and providing express authority to recipients to accept reimbursements of costs from a client. The regulation also sets forth rules for the accounting for and use of those attorneys' fees which recipients are not prohibited from claiming, collecting or retaining.

On December 16, 2009 President Obama signed the Consolidated Appropriations Act of 2010 into law. Public Law 111-117. This act provides LSC's appropriation for FY 2010. Like its predecessors, this law incorporates the various restrictions first imposed by the FY 1996 legislation by reference. However, section 533 of that same law also provides that Section 504(a) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (as contained in Pub. L. 104-134) is amended by striking paragraph (13). Taken together, these provisions serve to incorporate by reference all of the restrictions in section 504 of the FY 1996 law, except for paragraph (a)(13), which contained the restriction on attorneys' fees. As such, there is no current statutory restriction on LSC providing the money FY 2010 appropriated to it to any recipient which claims, or collects and retains attorneys' fees.

The current law lifts the statutory restriction, but does not affirmatively provide recipients the right to claim or collect and retain attorneys' fees, nor does it prohibit LSC from restricting a recipient's ability to claim or collect and retain attorneys' fees. As such, in accordance with LSC inherent regulatory authority, the regulation

remains in place notwithstanding the lifting of the statutory restriction unless and until repealed.

Repeal of Part 1642

At its Board Meeting on January 30, 2010, the LSC Board of Director's determined that retaining the regulatory restriction is no longer either necessary or appropriate. LSC's determination reflects a number of considerations. First, LSC notes that the lifting of the restriction indicates that Congress itself has had a change of heart regarding this restriction. Although Congress did not prohibit LSC from retaining the restriction, the fact that Congress chose not to reimpose this particular restriction (and no others) does indicate that support for this restriction has waned and that the policy arguments in support of the original restriction are no longer reflective of the will of Congress. Rather, the legislative history suggests that Congress chose not to reimpose the attorneys' fees restriction in express recognition of the fact that the restriction imposes several significant burdens on recipient. *See*, H. Rpt. 111–149 at p. 163; Transcript of Hearing of the Subcommittee on Commerce, Justice and Science of the House Committee of Appropriations of April 1, 2009 at pp. 220–223. As such, LSC believes that repealing the regulatory restriction is consistent with the expectations of Congress.

Moreover, LSC agrees that the restriction imposes unnecessary burdens on recipients and places clients at a disadvantage with respect to other litigants. Specifically, the ability to make a claim for attorneys' fees is often a strategic tool in the lawyers' arsenal to obtain a favorable settlement from the opposing side. Restricting a recipient's ability to avail itself of this strategic tool puts clients at a disadvantage and undermines clients' ability to obtain equal access to justice. The attorneys' fees restriction can also be said to undermine one of the primary purposes of fee-shifting statutes, namely to punish those who have violated the rights of persons protected under such statutes. In addition, in a time of extremely tight funding, the inability of a recipient to obtain otherwise legally available attorneys' fees places an unnecessary financial strain on the recipient. If a recipient could collect and retain attorneys' fees, it would free up other funding of the recipient to provide services to additional clients and help close the justice gap.¹ More

fundamental, the restriction results in clients of grantees being treated differently and less advantageously than all other private litigants, which LSC believes is unwarranted and fundamentally at odds with the Corporation's Equal Justice mission.

This action lifts the regulatory prohibition on claiming, or collecting and retaining attorneys' fees available under Federal or State law permitting or requiring the awarding of such fees. Accordingly as of the effective date of the regulation, recipients will be permitted make claims for attorneys' fees in any case in which they are otherwise legally permitted to make such a claim.² Recipients will also be permitted to collect and retain attorneys' fees whenever such fees are awarded to them.

With the repeal of the restriction, recipients will be permitted to claim and collect and retain attorneys' fees with respect to any work they have performed for which fees are available to them, without regard to when the legal work for which fees are claimed or awarded was performed. LSC considered whether recipients should be limited seek or obtain attorneys fees related to "new" work; that is, work done only as of the date of the statutory change or the effective date of this Interim Final Rule. LSC rejected that position because the attorneys' fees prohibition applies to the particular activity of seeking and receiving attorneys' fees, but is irrelevant to the permissibility of the underlying legal work. Limiting the ability of recipients to seek and receive attorneys' fees on only future case work would create a distinction between some work and other work performed by a recipient, *all of which was permissible when performed*. LSC finds such a distinction to be artificial and not necessary to effectuate Congress' intention.

LSC also believes that not limiting the work for which recipients may now seek or obtain attorneys' fees will best afford recipients the benefits of the lifting of the restriction. There may well be a number of ongoing cases where the

generating cases) are not affected by the lifting of the statutory ban on the claiming and collecting and retention of attorneys' fees and would not be affected by any regulatory amendment to part 1642. Accordingly, amendment of part 1642 would not have an adverse impact on the private bar nor provide any incentive for recipients to seek out fee-generating cases at the expense of the needs of other clients.

² Until this Interim Final Rule becomes effective, LSC has adopted a policy under which it will exercise its enforcement discretion and not take enforcement action against any recipient that filed a claim for or collected and retained attorneys' fees between the period of December 16, 2009 and the effective date of the regulation.

newly available option of the potentiality of attorneys' fees will still be effective to level the playing field and afford recipients additional leverage with respect to opposing counsel in those cases. Likewise, being able to obtain attorneys' fees in cases in which prior work has been performed would likely help relieve more financial pressure on recipients than a "new work only" implementation choice would because it would increase sources and amount of work for which fees might potentially be awarded.

Amendment of Part 1609 and Part 1610

As noted above, part 1642 contains two provisions not directly related to the restriction on claiming and collecting attorneys' fees. These provisions address the accounting for and use of attorneys' fees and the acceptance of reimbursement from a client. 45 CFR 1642.5 and 1642.6. These provisions used to be incorporated into LSC's regulation on fee-generating cases at 45 CFR part 1609, but were separated out and included in the new part 1642 regulation when it was adopted. Amending these provisions is not necessary to effectuate the lifting of the attorneys' fees restriction and they provide useful guidance to recipients. In fact, with recipients likely collecting and retaining fees more often than they have since 1996, the provision on accounting for and use of attorneys' fees will be of greater importance than it has been. Retaining these provisions would continue to provide clear guidance to the benefit of both recipients and LSC. Accordingly, LSC is moving these provisions back into part 1609 as §§ 1609.4 and 1609.5, with only technical amendment to the regulatory text to remove references to part 1642. The current § 1609.4 will be renumbered as 1609.6.

LSC is also making technical conforming amendments to delete references to part 1642 and the attorneys' fees statutory prohibition that are now obsolete. Having obsolete and meaningless regulatory provisions is not good regulatory practice and can at the very least lead to unnecessary confusion. Accordingly, LSC is deleting paragraph (c) of section 1609.3, General requirements, to eliminate that paragraph's reference to the attorneys' fees restriction in part 1642. Similarly, LSC is making a technical conforming amendment to its regulation at part 1610. Part 1610 sets forth in regulation the application of the appropriations law restrictions to a recipient's non-LSC funds. Section 1610.2 sets forth the list of the restrictions as contained in section 504 of the FY 1996

¹ It should be noted that the LSC Act's restriction on recipients taking fee-generating cases (and the implementing regulatory restriction on fee-

appropriations act, and the implementing LSC regulations which are applicable to a recipient's non-LSC funds. Subsection (b)(9) is the provision that references the attorneys' fees restriction (504(a)(13) and part 1642) and is now obsolete.

Request for Comments

LSC is implementing these changes as an Interim Final Rule with a Request for Comments. LSC believes this action is authorized and appropriate because LSC is removing (and not imposing any additional) prohibitions or requirements on recipients and is doing so in response to a specific statutory change removing a similar prohibition. LSC believes that this course of action will provide necessary clarity to recipients and will permit recipients and their clients to benefit from the statutory and regulatory changes at the earliest possible date. However, LSC is seeking comment on the changes being made herein and anticipates issuing a Final Rule discussing any comments. Interested parties may submit comments as provided herein. Comments are due to LSC no later than March 15, 2010.

List of Subjects

45 CFR Parts 1609 and 1610

Grant programs—Law, Legal services.

45 CFR Part 1642

Grant programs—Law, Lawyers, Legal services.

■ For reasons set forth above, and under the authority of 42 U.S.C. 2996g(e), LSC hereby amends 45 CFR chapter XVI as follows:

PART 1609—FEE-GENERATING CASES

■ 1. The authority citation for part 1609 continues to read as follows:

Authority: 42 U.S.C. 2996f(b)(1) and 2996e(c)(6).

§ 1609.3 [Amended]

■ 2. Paragraph (c) of § 1609.3, is removed.

§ 1609.4 [Redesignated as § 1609.6]

■ 3. Section 1609.4 is redesignated as § 1609.6.

■ 4. A new § 1609.4 is added to read as follows:

§ 1609.4 Accounting for and use of attorneys' fees.

(a) Attorneys' fees received by a recipient for representation supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion

that the amount of Corporation funds expended bears to the total amount expended by the recipient to support the representation.

(b) Attorneys' fees received shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received.

■ 5. A new § 1609.5 is added to read as follows:

§ 1609.5 Acceptance of reimbursement from a client.

(a) When a case results in recovery of damages or statutory benefits, a recipient may accept reimbursement from the client for out-of-pocket costs and expenses incurred in connection with the case, if the client has agreed in writing to reimburse the recipient for such costs and expenses out of any such recovery.

(b) A recipient may require a client to pay court costs when the client does not qualify to proceed *in forma pauperis* under the rules of the jurisdiction.

PART 1610—USE OF NON-LSC FUNDS, TRANSFERS OF LSC FUNDS, PROGRAM INTEGRITY

■ 6. The authority citation for part 1610 is revised to read as follows:

Authority: 42 U.S.C. 2996i; Pub. L. 104–208, 110 Stat. 3009; Pub. L. 104–134, 110 Stat. 1321; Pub. L. 111–117; 123 Stat. 3034.

§ 1610.2 [Amended]

■ 7. Section 1610.2 is amended by removing paragraph (b)(9) and redesignating paragraphs (b)(10) through (b)(14) as paragraphs (b)(9) through (b)(13) respectively.

PART 1642—[REMOVED AND RESERVED]

■ 8. Part 1642 is removed and reserved.

Victor M. Fortuno,
Interim President.

[FR Doc. 2010–2895 Filed 2–10–10; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

47 CFR Part 300

[Docket Number 100125044–0044–01]

RIN 0660–AA10

Revision to the Manual of Regulations and Procedures for Federal Radio Frequency Management

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Final Rule.

SUMMARY: The National Telecommunications and Information Administration (NTIA) hereby makes certain changes to its regulations, which relate to the public availability of the Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual). Specifically, the NTIA updates the version of the Manual of Regulations and Procedures for Federal Radio Frequency Management with which Federal agencies must comply when requesting use of the radio frequency spectrum.

EFFECTIVE DATE: This regulation is effective on February 11, 2010. The incorporation by reference of certain publications listed in the rule is approved by the Director of the **Federal Register** as of February 11, 2010.

ADDRESSES: A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW, Room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: William Mitchell, Office of Spectrum Management at (202) 482–8124 or wmitchell@ntia.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

NTIA authorizes the U.S. Government's use of the radio frequency spectrum. 47 U.S.C. § 902(b)(2)(A). As part of this authority, NTIA developed the NTIA Manual to provide further guidance to applicable Federal agencies. The NTIA Manual is the compilation of policies and procedures that govern the use of the radio frequency spectrum by the U.S. Government. Federal government agencies are required to follow these policies and procedures in their use of the spectrum.

Part 300 of title 47 of the Code of Federal Regulations provides

information about the process by which NTIA regularly revises the NTIA Manual and makes public this document and all revisions. Federal agencies are required to comply with the specifications in the NTIA Manual according to 47 U.S.C. § 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158, when requesting frequency assignments for use of the radio frequency spectrum.

This rule updates section 300.1(b) to specify the version of the NTIA Manual with which Federal agencies must comply when requesting frequency assignments for use of the radio frequency spectrum. In particular, section 300.1(b) amends the regulations by replacing "September 2008" with "September 2009." Upon the effective date of this rule, Federal agencies must comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through September 2009.

The NTIA Manual is scheduled for revision in January, May, and September of each year and is submitted to the Director of the **Federal Register** for Incorporation by Reference approval. The Director of the **Federal Register** approved this incorporation by reference in accordance with 5 U.S.C. § 552(a) and 1 CFR part 51. The NTIA Manual is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, by referring to Catalog Number 903-008-00000-8. A reference copy of the NTIA Manual, including all revisions in effect, is available in the Office of Spectrum Management, 1401 Constitution Avenue, NW, Room 1087, Washington, DC 20230, or call William Mitchell at (202) 482-8124, and available online at <http://www.ntia.doc.gov/osmhome/redbook/redbook.html>. The NTIA Manual is also on file 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.

Paperwork Reduction Act

This action does not contain collection of information requirements subject to the Paperwork Reduction Act (PRA). Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the PRA, unless that collection

displays a currently valid OMB Control Number.

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Administrative Procedure Act/Regulatory Flexibility Act

NTIA finds good cause under 5 U.S.C. § 553(b)(3)(B) to waive prior notice and opportunity for public comment as it is unnecessary. This action amends the regulations to include the date of the most current version of the NTIA Manual. These changes do not impact the rights or obligations of the public. The NTIA Manual applies only to Federal agencies. Because these changes impact only Federal agencies, NTIA finds it unnecessary to provide for the notice and comment requirements of 5 U.S.C. § 553.

Because notice and opportunity for comment are not required pursuant to 5 U.S.C. § 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) are not applicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Executive Order 13132

This rule does not contain policies having federalism implications as that term is defined in EO 13132.

Regulatory Text

List of Subjects in 47 CFR Part 300

Incorporation by reference; Radio.

■ For the reasons set forth in the preamble, NTIA amends title 47, Part 300 as follows:

PART 300—MANUAL OF REGULATIONS AND PROCEDURES FOR FEDERAL RADIO FREQUENCY MANAGEMENT

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

Authority: 47 U.S.C. 901 *et seq.*, Executive Order 12046 (March 27, 1978), 43 FR 13349, 3 CFR 1978 Comp., p. 158.

■ 2. Paragraph 300.1 (b) is revised to read as follows:

§ 300.1 Incorporation by reference of the Manual of Regulations and Procedures for Federal Radio Frequency Management.

* * * * *

(b) The Federal agencies shall comply with the requirements set forth in the January 2008 edition of the NTIA Manual, as revised through September 2009, which is incorporated by reference with approval of the Director,

Office of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

* * * * *

Dated: February 4, 2010.

Anna M. Gomez,

Deputy Assistant Secretary for Communications and Information.

[FR Doc. 2010-2968 Filed 2-10-10; 8:45 am]

BILLING CODE 3510-60-S

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 217

[DFARS Case 2008-D005]

RIN 0750-AG24

Defense Federal Acquisition Regulation Supplement; Limitation on Procurements on Behalf of DoD

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is adopting as final, with changes, the interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address statutory provisions relating to interagency procurements on behalf of DoD. The final rule adds new policy at to address Section 801(b) requirements and expands existing DFARS definitions.

DATES: *Effective Date:* March 15, 2010.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), 3060 Defense Pentagon, Washington, DC 20301-3060, Telephone 703-602-1302; facsimile 703-602-0350, Please cite DFARS Case 2008-D005.

SUPPLEMENTARY INFORMATION:

A. Background

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375) prescribes policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies.

Section 801(b)(1), at paragraphs (A) and (C), of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) authorizes a DoD acquisition official to procure property and services in excess of the simplified acquisition threshold through civilian agencies only if—

(1) The civilian agencies agree to adhere to defense procurement requirements; or

(2) The Under Secretary of Defense (AT&L) certifies that the procurement is in the best interest of the Department.

The statute also requires DoD to issue guidance on interagency contracting consistent with the Act that addresses the circumstances in which it is appropriate for DoD acquisition officials to procure goods or services through a contract entered into by an agency outside the DoD.

DoD published an interim rule at 74 FR 34270 on July 15, 2009, to address the new statutory requirements. Statutory limitations in section 817 of Public Law 109-364, the John Warner National Defense Authorization Act for Fiscal Year 2007, and section 811 of Public Law 109-163, the National Defense Authorization Act for Fiscal Year 2006, were previously implemented and do not impact this change.

Two respondents submitted comments on the interim rule. A discussion of the comments is provided as follows:

1. *Compliance With Financial Management Regulations*

Comment: Public Law 110-181 states that the non-DoD agency must comply with its requirements including the “applicable Department of Defense financial management regulations.” This requirement for the non-DoD activity to follow the DoD financial management regulations when making purchases for a non-DoD component should be included in the DFARS.

Response: The rule has been amended at DFARS 217.7802(a) to clarify that non-DoD activities will comply with applicable DoD financial management

regulations when making purchases for a DoD component.

2. *Definition of “Governmentwide Acquisition Contract”*

Comment: “Governmentwide acquisition contract” should be defined in the DFARS to make certain of its appropriate meaning as defined in the public law.

Response: The rule was amended at DFARS 217.7801 to include the definition of “Governmentwide acquisition contract”.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 rule addresses internal DoD procedural matters.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR part 217, which was published at 74 FR 34270 on July 15, 2009, is adopted as a final rule with the following changes:

PART 217—SPECIAL CONTRACTING METHODS

■ 1. The authority citation for 48 CFR part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 217.7801 is amended by adding the definition of “governmentwide acquisition contract” to read as follows:

217.7801 Definitions.

* * * * *

Governmentwide acquisition contract means a task or delivery order contract that—

(1) Is entered into by a non-defense agency; and

(2) May be used as the contract under which property or services are procured for one or more other departments or agencies of the Federal Government.

* * * * *

■ 3. Section 217.7802 is amended by revising paragraph (a) introductory text to read as follows:

217.7802 Policy.

(a) A DoD acquisition official may place an order, make a purchase, or otherwise acquire supplies or services for DoD in excess of the simplified acquisition threshold through a non-DoD agency in any fiscal year only if the head of the non-DoD agency has certified that the non-DoD agency will comply with defense procurement requirements for the fiscal year to include applicable DoD financial management regulations.

[FR Doc. 2010-2698 Filed 2-10-10; 8:45 am]

BILLING CODE 5001-08-P

Proposed Rules

Federal Register

Vol. 75, No. 28

Thursday, February 11, 2010

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2010-0035; Directorate Identifier 2009-NM-066-AD]

RIN 2120-AA64

Airworthiness Directives; The Boeing Company Model 747-400, 747-400D, and 747-400F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for Model 747-400, 747-400D, and 747-400F series airplanes. This proposed AD would require installing a hot short protector (HSP) for the fuel quantity indicating system (FQIS) of the center fuel tank and, for certain airplanes, the horizontal stabilizer fuel tank. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to prevent an electrical hot short from a source outside the FQIS to the densitometer wiring from causing failure of the FQIS densitometer resistors, which could result in an ignition source inside the center or horizontal stabilizer fuel tanks. An ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by March 29, 2010.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202-493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, 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 service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H-65, Seattle, Washington 98124-2207; telephone 206-544-5000, extension 1; fax 206-766-5680; e-mail me.boecom@boeing.com; Internet <https://www.myboeingfleet.com>. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425-227-1221 or 425-227-1152.

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 this proposed AD, 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.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM-130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 917-6482; fax (425) 917-6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2010-0035; Directorate Identifier 2009-NM-066-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this

proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled "Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements" (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21-78, and subsequent Amendments 21-82 and 21-83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in

combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

As part of SFAR 88 analysis, Boeing found that an electrical hot short from a source outside the fuel quantity indicating system (FQIS) to the densitometer wiring could result in an ignition source if the densitometer resistors failed while not covered by fuel. Installation of an electrical isolation device, a “hot short protector” (HSP), would protect the fuel densitometer for the horizontal stabilizer tank (HST) and the center wing tank (CWT) from exposure to unsafe energy levels. Failure of the FQIS densitometer resistors caused by a hot short could result in an ignition source inside the center or horizontal stabilizer fuel tanks. An ignition source, in combination with flammable fuel vapors, could result in a fuel tank

explosion and consequent loss of the airplane.

Relevant Service Information

We have reviewed Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009 (for airplanes with CWTs), and Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008 (for airplanes with HSTs). Those service bulletins describe procedures for installing an HSP in the CWT and the HST, as applicable. The installation involves re-terminating the existing wire bundle from the densitometer connector to the HSP, adding a new wire bundle that connects between the HSP and the densitometer connector, and installing the HSP and support bracket. For the HSP, the installation might also include reworking the lower center drip shield to provide clearance for the new wire connector backshell on the densitometer.

Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009 (for airplanes with CWTs), and Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008, refer to Cinch Service Bulletin CN1036–28–01, Revision C, dated January 18, 2007, as an additional source of service information for installing the HSP in the fuel tanks.

Other Related Rulemaking

On April 28, 2008, we issued AD 2008–10–06, Amendment 39–15512 (73 FR 25990, May 8, 2008), applicable to Boeing Model 747–400, –400D, and –400F series airplanes. That AD requires revising the maintenance program by incorporating new airworthiness limitations (AWLs) for fuel tank systems to satisfy SFAR 88 requirements. One of those AWLs, AWL 28–AWL–23, is related to this proposed AD by including inspection of the bonding integrity during any subsequent replacement of the HSP.

FAA’s Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 80 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

TABLE—ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Fleet cost
Installation ¹	6 to 17	\$85	\$15,821 to \$30,650	\$16,331 to \$32,095	\$306,480 to \$2,567,600.

¹ Work hours and parts costs depend on airplane configuration.

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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a “significant regulatory action” under Executive Order 12866,
2. Is not a “significant rule” under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0035; Directorate Identifier 2009–NM–066–AD.

Comments Due Date

(a) We must receive comments by March 29, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in the service bulletins listed in paragraphs (c)(1) and (c)(2) of this AD.

(1) Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009.

(2) Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Unsafe Condition

(e) This AD results from fuel system reviews conducted by the manufacturer. The Federal Aviation Administration is issuing this AD to prevent an electrical hot short from a source outside the Fuel Quantity Indicating System (FQIS) to the densitometer wiring from causing failure of the FQIS densitometer resistors, which could result in an ignition source inside the center or horizontal stabilizer fuel tanks. An ignition source, in combination with flammable fuel vapors, could result in a fuel tank explosion and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Installation of Hot Short Protector

(g) Within 60 months after the effective date of this AD: Do the applicable installations of the hot short protector (HSP) specified in paragraphs (g)(1) and (g)(2) of this AD.

Note 1: Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009; and Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008; refer to Cinch Service Bulletin CN1036–28–01, Revision C, dated January 18, 2007, as an additional source of guidance for installing the HSP in the fuel tanks.

(1) For all airplanes: Install the HSP in the center wing tank, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–28A2266, Revision 1, dated December 10, 2009.

(2) For airplanes identified in Boeing Alert Service Bulletin 747–28A2267, dated December 18, 2008: Install the HSP in the horizontal stabilizer tank, in accordance with the Accomplishment Instructions of Boeing

Alert Service Bulletin 747–28A2267, dated December 18, 2008.

Credit for Installation Previously Accomplished in Accordance With Previous Issue of Service Bulletin

(h) Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin 747–28A2266, dated December 18, 2008, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), 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:* Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590. Or, e-mail information to *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Issued in Renton, Washington, on February 4, 2010.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–2992 Filed 2–10–10; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 51 and 52**

[EPA–HQ–OAR–2004–0014: FRL–9113–1]

RIN 2060–AP73

Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Inclusion of Fugitive Emissions; Proposal for Additional Stay

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to put in place an additional 18-month stay to the existing stay of the inclusion of fugitive emissions requirements in the federal Prevention of Significant Deterioration (PSD) program published in the **Federal Register** on December 19, 2008, in the final rule entitled,

“Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NSR): Reconsideration of Fugitive Emissions” (“Fugitive Emissions Rule”). The Fugitive Emissions Rule under the federal PSD program requires that fugitive emissions be included in determining whether a physical or operation change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Clean Air Act (Act or CAA).

The existing stay is in effect for three months; that is, from December 31, 2009, until March 31, 2010. This action proposes to put in place an additional stay for 18 months, which we believe will allow for sufficient time for EPA to propose, take public comment on, and issue a final action concerning the inclusion of fugitive emissions in the Federal PSD program.

DATES: Comments must be received on or before March 15, 2010.

Public Hearing. If anyone contacts EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by February 22, 2010, we will hold a public hearing on February 26, 2010. If a hearing is held, the record for the hearing will remain open until March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2004–0014, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.

- *E-mail: a-and-r-docket@epa.gov.*

- *Fax: (202) 566–1741.*

- *Mail: Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.*

- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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 the applicable docket. 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.

Public Hearing. If a public hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, Washington, DC 20004.

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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, 20460. 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) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

FOR FURTHER INFORMATION CONTACT: Ms. Carrie Wheeler, Air Quality Policy

Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541-9771; fax number (919) 541-5509; or e-mail address: wheeler.carrie@epa.gov.

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; e-mail address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups.

Industry group	SIC ^a	NAICS ^b
Electric Services	491	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum Refining	291	324110.
Industrial Inorganic Chemicals	281	325181, 325120, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial Organic Chemicals	286	325110, 325132, 325192, 325188, 325193, 325120, 325199.
Miscellaneous Chemical Products	289	325520, 325920, 325910, 325182, 325510.
Natural Gas Liquids	132	211112.
Natural Gas Transport	492	486210, 221210.
Pulp and Paper Mills	261	322110, 322121, 322122, 322130.
Paper Mills	262	322121, 322122.
Automobile Manufacturing	371	336111, 336112, 336211, 336992, 336322, 336312, 336330, 336340, 336350, 336399, 336212, 336213.
Pharmaceuticals	283	325411, 325412, 325413, 325414.
Mining	211, 212, 213	21.
Agriculture, Fishing and Hunting	111, 112, 113, 115	11.

^a Standard Industrial Classification

^b North American Industry Classification System.

Entities potentially affected by the subject rule for this proposed action also include state, local, and tribal governments.

B. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit information containing CBI to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, Attention: Docket ID EPA-HQ-OAR-2004-0014. Clearly

mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for preparing your comments. When submitting your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at

your estimate in sufficient detail to allow for it to be reproduced.

- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this final rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

D. How can I find information about a possible public hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; e-mail address: long.pam@epa.gov.

E. How is this preamble organized?

I. General Information

- A. Does this action apply to me?
- B. What should I consider as I prepare my comments for EPA?
- C. Where can I get a copy of this document and other related information?
- D. How can I find information about a possible Public Hearing?
- E. How is this preamble organized?

II. This Action

III. Statutory and Executive Order Reviews

- A. Executive Order 12866: Regulatory Planning and Review
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act
- D. Unfunded Mandates Reform Act
- E. Executive Order 13132: Federalism
- F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
- G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
- H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
- I. National Technology Transfer and Advancement Act
- J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

K. Determination Under Section 307(d)
IV. Statutory Authority

II. This Action

On December 19, 2008, the EPA (“we”) issued a final rule revising our requirements of the major NSR programs regarding the treatment of fugitive emissions (“Fugitive Emissions Rule”). 73 FR 77882. The final rule required fugitive emissions to be included in determining whether a physical or operational change results in a major modification only for sources in industries that have been designated through rulemaking under section 302(j) of the Act. The final rule amended all portions of the major NSR program regulations: Permit requirements, the PSD program, and the emission offset interpretive ruling.

On February 17, 2009, the Natural Resources Defense Council (NRDC) submitted a petition for reconsideration of the December 2008 final rule as provided for in CAA 307(d)(7)(B).¹

On April 24, 2009, we responded to the February 17, 2009, petition by letter indicating that we were convening a reconsideration proceeding for the inclusion of fugitive emissions challenged in the petition and granting a 3-month administrative stay of the rule contained in the federal PSD program at 40 CFR parts 51 and 52. The letter also indicated that we would publish a notice of proposed rulemaking “in the near future” to address the specific issues for which we are granting reconsideration.²

The administrative stay of the Fugitive Emissions Rule became effective on September 30, 2009. See 74 FR 50115, FR Doc. E9-23503. As noted above, our authority under section 307(d)(7)(B) to stay a rule or portion thereof solely under the Administrator’s discretion is limited to 3 months. When we have issued similar administrative stays in the past, it has often been our practice to also propose an additional stay through a rulemaking process to ensure that there is no gap between the end of the stay and the completion of the final action. An interim final determination was made to provide an additional stay for 3 months. This additional stay became effective on December 31, 2009. See 74 FR 65692. In this case, we believe that an additional stay for 18 months would provide adequate time for EPA to propose, take comment on, and issue a final action on issues that are associated with the inclusion of fugitive emissions

provisions. Therefore, we propose to put in place an additional stay of the fugitive emissions provisions contained in the Federal PSD program at 40 CFR parts 51 and 52 indefinitely. As alternatives, we also solicit comment on different time periods for the extension of the stay: (1) for 12 months, until February 11, 2011; or (2) for 24 months, until February 11, 2012.

Note that we are not taking comment at this time on any substantive issues concerning any of the provisions subject to the reconsideration. This notice simply proposes to put in place an additional stay, so comments should be limited to the issue of whether and how long to add to the existing administrative stay. A separate **Federal Register** notice published in the near future will specifically solicit comment on issues related to the reconsideration of the inclusion of fugitive emissions contained in the December 2008 final rule for which the Administrator granted reconsideration.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

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 action only proposes to put in place an additional stay for 18 months.

However, the Office of Management and Budget has previously approved the information collection requirements contained in the existing regulations under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060-0003. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the

¹ John Walke, NRDC, EPA-HQ-OAR-2004-0014-0060.

² Lisa Jackson, US EPA, EPA-HQ-OAR-2004-0014-0062.

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 rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose an additional stay to the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. No costs are associated with this amendment.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action does not contain a 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, and tribal governments, in the aggregate, or the private sector in any one year. This action only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. Thus, this rule is not subject to the requirements of sections 202 or 205 of the Unfunded Mandates Reform Act (UMRA).

This proposed rule 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.

E. Executive Order 13132: Federalism

This action 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 EO 13132. This action only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. Thus, EO 13132 does not apply to this rule.

In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in EO 13175 (65 FR 67249, November 9, 2000). This action will not impose any new obligations or enforceable duties on tribal governments. Thus, EO 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because this proposal only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions. However, EPA solicits comments on whether the proposal would result in an adverse environmental effect that would have a disproportionate effect on children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in EO 13211 (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. This proposal only proposes to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (“NTTAA”), Public Law No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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 United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low income populations because it only seeks to put in place an additional stay of the regulations at 40 CFR parts 51 and 52 concerning the inclusion of fugitive emissions.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(J) and 307(d)(1)(V) of the CAA, the Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

IV. Statutory Authority

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This

notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects

40 CFR Part 51

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

40 CFR Part 52

Administrative practices and procedures, Air pollution control, Carbon monoxide, Fugitive emissions, Intergovernmental relation, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: February 4, 2010.

Lisa P. Jackson,
Administrator.

[FR Doc. 2010-2965 Filed 2-10-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2006-0569; FRL-9112-2]

Approval of Air Quality Implementation Plans; New Mexico; Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing revisions to the State Implementation Plan submitted by the Governor of New Mexico on May 24, 2006. The revisions address Title 20 of the New Mexico Administrative Code, Chapter 11, Part 102 (denoted 20.11.102 NMAC), which apply to oxygenated fuels in the Albuquerque/Bernalillo County area. The revisions include editorial and substantive changes that clarify the requirements under 20.11.102 NMAC. We are proposing to approve these revisions in accordance with the requirements of section 110 of the Clean Air Act.

DATES: Written comments must be received on or before *March 15, 2010*.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue,

Suite 1200, Dallas, Texas 75202-2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Carrie Paige, Air Planning Section (6PD-L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733, telephone (214) 665-6521; fax number 214-665-7263; e-mail address paige.carrie@epa.gov.

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule, which is located in the rules section of this **Federal Register**.

Dated: January 15, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010-2791 Filed 2-10-10; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-HQ-OAR-2003-0062; FRL-9113-2]

RIN 2060-AP75

Implementation of the New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers (PM_{2.5}); Notice of Proposed Rulemaking To Repeal Grandfathering Provision and End the PM₁₀ Surrogate Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, in response to a petition for reconsideration, EPA is proposing two actions that would end EPA's 1997 policy that allows sources and permitting authorities to use a demonstration of compliance with the prevention of significant deterioration (PSD) requirements for particulate matter less than 10 micrometers (PM₁₀) as a surrogate for meeting the PSD requirements for particulate matter less than 2.5 micrometers (PM_{2.5}). First, in accordance with the Administrator's commitment to the petitioners in a letter dated April 24, 2009, the EPA is proposing to repeal the "grandfathering" provision for PM_{2.5} contained in the Federal PSD program. Second, EPA is proposing to end early the PM₁₀ Surrogate Policy applicable in States that have an approved PSD program in their State Implementation Plan ("SIP-approved States").

DATES: *Comments.* Comments must be received on or before March 15, 2010.

Public Hearing. If anyone contacts EPA requesting the opportunity to speak at a public hearing concerning the proposed regulation by February 22, 2010, EPA will hold a public hearing on February 26, 2010. If a hearing is held, the record for the hearing will remain open until March 29, 2010.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2003-0062, by one of the following methods:

- *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *E-mail:* a-and-r-docket@epa.gov.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mail code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Please include a total of two copies.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW.,

Washington, DC 20460. 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 the applicable docket. 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, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the EPA Docket Center, Public Reading Room, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. 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) 566-1742, and the telephone number for the Air Docket is (202) 566-1744.

Public Hearing. If a public hearing is held, it will be held at the U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Dan deRoock, Air Quality Policy Division, (C504-03), U.S. Environmental Protection Agency, Research Triangle Park, NC, 27711; telephone number (919) 541-5593; fax number (919) 541-5509; or e-mail address: deroock.dan@epa.gov.

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03), Environmental Protection Agency,

Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; e-mail address: long.pam@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

Entities affected by this proposed action include: (1) Those proposed new and modified major stationary sources subject to the Federal PSD program that submitted a complete application for a PSD permit before the July 15, 2008 effective date of the PM_{2.5} New Source Review (NSR) Implementation Rule, but have not yet received a final and effective permit authorizing the source to commence construction, and (2) those proposed new and modified major stationary sources, subject to a PSD program in SIP-approved States, that have not yet received a final and effective permit authorizing the source to commence construction.

EPA estimates that about twenty-one proposed new sources or modifications would be affected by the proposed repeal of the grandfathering provision. At least two projects known to have been grandfathered have already received final permits to construct (that are effective) prior to EPA taking action to stay the provision, but EPA is not proposing that this repeal would apply retroactively to such permits.

The entities potentially affected by a proposal to end early the use of the PM₁₀ Surrogate Policy in SIP-approved States include proposed new and modified major stationary sources in all industry groups. The majority of sources potentially affected are expected to be in the following groups:

Industry group	NAICS ^a
Electric services	221111, 221112, 221113, 221119, 221121, 221122.
Petroleum refining	32411.
Industrial inorganic chemicals	325181, 32512, 325131, 325182, 211112, 325998, 331311, 325188.
Industrial organic chemicals	32511, 325132, 325192, 325188, 325193, 32512, 325199.
Miscellaneous chemical products	32552, 32592, 32591, 325182, 32551.
Natural gas liquids	211112.
Natural gas transport	48621, 22121.
Pulp and paper mills	32211, 322121, 322122, 32213.
Paper mills	322121, 322122.
Automobile manufacturing	336111, 336112, 336712, 336211, 336992, 336322, 336312, 33633, 33634, 33635, 336399, 336212, 336213.
Pharmaceuticals	325411, 325412, 325413, 325414.

^aNorth American Industry Classification System.

Entities affected by this proposal also include State and local reviewing authorities, and Indian country, where affected new and modified major stationary sources would locate.

B. What should I consider as I prepare my comments for EPA?

1. **Submitting CBI.** Do not submit information containing CBI to EPA through <http://www.regulations.gov> or e-mail. Send or deliver information

identified as CBI only to the following address: Mr. Roberto Morales, OAQPS Document Control Officer (C404-02), U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, **Attention:** Docket

ID EPA-HQ-OAR-2003-0062. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting your comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this proposed rule will be posted in the regulations and standards section of our NSR home page located at <http://www.epa.gov/nsr>.

D. How can I find information about a possible Public Hearing?

To request a public hearing or information pertaining to a public hearing on this document, contact Ms. Pamela Long, Air Quality Policy Division, Office of Air Quality Planning and Standards (C504-03),

Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-0641; fax number (919) 541-5509; e-mail address: long.pam@epa.gov.

E. How is this preamble organized?

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II. Background

A. Prevention of Significant Deterioration (PSD) Program

The NSR provisions of the Clean Air Act (Act) are a combination of air quality planning and air pollution control technology program requirements for new and modified major stationary sources of air pollution. Section 109 of the Act requires EPA to promulgate primary national ambient air quality standards (NAAQS or standards) to protect public health and secondary NAAQS to protect public welfare. Once we¹ have set these standards, States must develop, adopt, and submit to us for approval SIPs that contain emission limitations and other control measures to attain and maintain the NAAQS and to meet the other requirements of section 110(a) of the Act.

Part C of title I of the Act contains the requirements for a component of the major NSR program known as the PSD program. The PSD program sets forth procedures for the preconstruction review and permitting of new and modified major stationary sources of air pollution locating in areas meeting the NAAQS ("attainment" areas) and areas for which there is insufficient information to classify an area as either attainment or nonattainment ("unclassifiable" areas). In most States, EPA has approved a PSD permit program that is part of the applicable SIP. The Federal PSD program at 40 CFR 52.21 applies in States that lack a SIP-approved PSD permit program, and in Indian country.² The applicability of the PSD program to a new major stationary source or major modification must be determined in advance of construction and is a pollutant-specific determination. Once a major new source or major modification is determined to be subject to the PSD program (*i.e.*, a PSD source), among other requirements, it must undertake a series of analyses for each NSR regulated pollutant subject to review to demonstrate that it will use the best available control technology (BACT) and will not cause or contribute to a violation of any NAAQS or increment. In cases where the source's emissions of any NSR regulated pollutant may adversely affect an area specially classified as "Class I,"

¹ In this proposal, the terms "we," "us," and "our," refer to the EPA.

² We have delegated our authority to some States that lack an approved PSD program in their SIPs but have requested the authority to implement the Federal PSD program. The EPA remains the reviewing authority in non-delegated States lacking SIP-approved programs and in Indian country.

additional review must be conducted to protect the Class I area's increments and special attributes referred to as "air quality related values."

Under certain circumstances, EPA has previously allowed proposed new major sources and major modifications that have submitted a complete PSD permit application before the effective date of an amendment to the PSD regulations, but have not yet received a final and effective PSD permit, to continue relying on information already in the application rather than immediately having to amend applications to demonstrate compliance with the new PSD requirements. In such a way, these proposed sources and modifications were "grandfathered" or exempted from the new PSD requirements that would otherwise have applied to them.

For example, the Federal PSD regulations at 40 CFR 52.21(i)(1)(x) provide that the owners or operators of proposed sources or modifications that submitted a complete permit application before July 31, 1987, but did not yet receive the PSD permit, are not required to meet the requirements for PM₁₀, but could instead satisfy the requirements for total suspended particulate matter that were previously in effect.

In addition, EPA has allowed some grandfathering for permit applications submitted before the effective date of an amendment to the PSD regulations establishing new maximum allowable increases in pollutant concentrations (also known as PSD increments). The Federal PSD regulations at 40 CFR 52.21(i)(10) provide that proposed sources or modifications that submitted a complete permit application before the effective date of the increment in the applicable implementation plan are not required to meet the increment requirements for particulate matter less than 10 microns, but could instead satisfy the increment requirements for total suspended particulate matter that were previously in effect. Also, 40 CFR 52.21(b)(i)(9) provides that sources or modifications that submitted a complete permit application before the provisions embodying the maximum allowable increase for nitrogen oxides (the NO₂ increments) took effect, but did not yet receive a final and effective PSD permit, are not required to demonstrate compliance with the new increment requirements to be eligible to receive the permit.

When the reviewing authority reaches a preliminary decision to authorize construction of a proposed major new source or major modification, the authority must provide notice of the preliminary decision and an

opportunity for comment by the general public, industry, and other persons that may be affected by the emissions of the proposed major source or major modification. After considering these comments, the reviewing authority may issue a final determination on the construction permit in accordance with the PSD regulations. However, under EPA regulations at 40 CFR part 124 and similar State regulations, an administrative appeal of a permitting determination may prevent the permit from becoming final and effective until the appeal is resolved.

B. Fine Particulate Matter and the NAAQS for PM_{2.5}

Fine particles in the atmosphere are made up of a complex mixture of components. Common constituents include sulfate (SO₄); nitrate (NO₃); ammonium; elemental carbon; a great variety of organic compounds; and inorganic material (including metals, dust, sea salt, and other trace elements) generally referred to as "crustal" material, although it may contain material from other sources. Airborne particulate matter with a nominal aerodynamic diameter of 2.5 micrometers or less (a micrometer is one-millionth of a meter, and 2.5 micrometers is less than one-seventh the average width of a human hair) is considered to be "fine particles," and is also known as PM_{2.5}. "Primary" particles are emitted directly into the air as a solid or liquid particle (e.g., elemental carbon from diesel engines or fire activities, or condensable organic particles from gasoline engines). "Secondary" particles (e.g., SO₄ and NO₃) form in the atmosphere as a result of various chemical reactions.

The health effects associated with exposure to PM_{2.5} are significant. Epidemiological studies have shown a significant correlation between elevated PM_{2.5} levels and premature mortality. Other important effects associated with PM_{2.5} exposure include 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. Individuals particularly sensitive to PM_{2.5} exposure include older adults, people with heart and lung disease, and children.

On July 18, 1997, we revised the NAAQS for PM to add new standards for fine particles, using PM_{2.5} as the indicator. We established health-based (primary) annual and 24-hour standards for PM_{2.5}. See 62 FR 38652. We set an

annual standard at a level of 15 micrograms per cubic meter (µg/m³) and a 24-hour standard at a level of 65 µg/m³. At the time we established the primary standards in 1997, we also established welfare-based (secondary) standards identical to the primary standards. The secondary standards are designed to protect against major environmental effects of PM_{2.5} such as visibility impairment, soiling, and materials damage.

On October 17, 2006, we revised the primary and secondary NAAQS for PM_{2.5} and PM₁₀. In that rulemaking, we reduced the 24-hour NAAQS for PM_{2.5} to 35 µg/m³ and retained the existing annual PM_{2.5} NAAQS of 15 µg/m³. In addition, we retained PM₁₀ as the indicator for coarse PM, retained the existing PM₁₀ 24-hour NAAQS of 150 µg/m³, and revoked the annual PM₁₀ NAAQS (which had previously been set at 50 µg/m³). See 71 FR 61236.

C. How is the PSD program for PM_{2.5} implemented?

After we promulgated the NAAQS for PM_{2.5} in 1997, we issued a guidance document entitled "Interim Implementation for the New Source Review Requirements for PM_{2.5}" (John S. Seitz, EPA, October 23, 1997).³ That guidance was designed to help States implement the Act requirements for PSD pertaining to the new PM_{2.5} NAAQS and PM_{2.5} as a regulated pollutant in light of known technical difficulties to addressing PM_{2.5}. Specifically, section 165(a)(1) of the Act provides that no new or modified major source may be constructed without a PSD permit that meets all of the section 165(a) requirements with respect to the regulated pollutant. Moreover, section 165(a)(3) provides that the emissions from any such source may not cause or contribute to a violation of any NAAQS. Also, section 165(a)(4) requires BACT for each pollutant subject to PSD regulation. The 1997 guidance states that sources are allowed to use implementation of a PM₁₀ program as a surrogate for meeting PM_{2.5} NSR requirements until certain difficulties concerning PM_{2.5} are resolved, including the lack of necessary tools to calculate the emissions of PM_{2.5} and related precursors, the lack of adequate modeling techniques to project ambient impacts, and the lack of PM_{2.5} monitoring sites.

On May 16, 2008, EPA published a final rule containing requirements for

³ Available in the docket for this rulemaking, ID No. EPA-HQ-OAR-2003-0062, and at <http://www.epa.gov/region07/programs/artd/air/nsr/nsrmemos/pm25.pdf>.

State and Tribal plans to implement the Act's preconstruction review provisions for the 1997 PM_{2.5} NAAQS in both attainment and nonattainment areas. 73 FR 28321. The rule, with two exceptions, requires that major stationary sources seeking permits must begin directly satisfying the PM_{2.5} requirements as of the effective date of the new rule, rather than relying on the 1997 PM₁₀ Surrogate Policy. First, in PM_{2.5} attainment (or unclassifiable) areas, the new PSD requirements under 40 CFR 51.166 set forth the PM_{2.5} requirements for States with SIP-approved programs to include in their State PSD programs; similar requirements were added to 40 CFR 52.21—the Federal PSD program—for EPA (or, where applicable, delegated State agencies) to use for implementing the new PM_{2.5} requirements in States lacking approved PSD programs in their SIPs.

Second, in PM_{2.5} nonattainment areas, new requirements were added to 40 CFR 51.165 to enable States to address the PM_{2.5} NAAQS as part of a nonattainment NSR program. During the period of time allowed for States to amend their existing nonattainment NSR programs to address the new PM_{2.5} requirements, States are allowed to rely on the procedures under 40 CFR part 51 appendix S ("The Interpretative Rule") to issue permits to new or modified major stationary sources proposing to locate in a PM_{2.5} nonattainment area. In the preamble to the May 2008 final rule, EPA indicated that, in any State that was unable to apply the PM_{2.5} requirements of appendix S, EPA would act as the reviewing authority for the relevant PM_{2.5} portions of the nonattainment NSR permit. See 73 FR at 28342.

As mentioned, there were two exceptions to the imposition of new PM_{2.5} requirements to replace the use of the 1997 PM₁₀ Surrogate Policy for issuing construction permits. The May 2008 final rule included a grandfathering provision for PM_{2.5} in the Federal PSD program at 40 CFR 52.21. This grandfathering provision applied to sources that had applied for, but had not yet received, a final and effective PSD permit before the July 15, 2008 effective date of the May 2008 final rule. The relevant grandfathering provision is described in greater detail in section III.A of this preamble. This grandfathering provision had not been proposed for comment in the November 1, 2005 notice of proposed rulemaking. Instead, the November 2005 proposal provided that the revised PM_{2.5} requirements when final would take effect immediately in States where the

Federal PSD program applies. 70 FR 65986, November 1, 2005 at 66043.

For States with SIP-approved PSD programs, the preamble to the May 2008 final rule stated that SIP-approved States may continue to implement a PM₁₀ program as a surrogate to meet the PSD program requirements for PM_{2.5} pursuant to the 1997 [PM₁₀ Surrogate Policy]" for up to three years (until May 2011) or until the individual revised State PSD programs for PM_{2.5} are approved by EPA, whichever comes first. See 73 FR 28341.

D. Case Law Relevant to the Use of the PM₁₀ Surrogate Policy

When EPA issued the PM₁₀ Surrogate Policy in 1997, we stated that meeting the NSR program requirements for PM₁₀ may be used as a surrogate for meeting the NSR program requirements for PM_{2.5} until certain technical difficulties concerning PM_{2.5} are resolved. At that time, we did not identify criteria to be applied before the policy could be used for satisfying the PM_{2.5} requirements. However, courts have issued a number of opinions that should be read as establishing guidelines for the use of an analysis based on PM₁₀ as a surrogate for meeting the PSD requirements for PM_{2.5}. Applicants and State permitting authorities seeking to rely on the PM₁₀ Surrogate Policy should consider these opinions in determining whether PM₁₀ serves as an adequate surrogate for meeting the PM_{2.5} requirements in the case of the specific permit application at issue.

First, courts have held that a surrogate may be used only after it has been shown to be reasonable to do so. See, e.g., *Sierra Club v. EPA*, 353 F.3d 976, 982–984 (D.C. Cir. 2004) (stating general principle that EPA may use a surrogate if it is "reasonable" to do so and applying analysis from *National Lime Assoc. v. EPA*, 233 F.3d 625, 637 (D.C. Cir. 2000) that is applicable to determining whether use of a surrogate is reasonable in setting emissions limitations for hazardous air pollutants under section 112 of the Act); *Mossville Environmental Action Now v. EPA*, 370 F.3d 1232, 1242–43 (D.C. Cir. 2004) (EPA must explain the correlation between the surrogate and the represented pollutant that provides the basis for the surrogacy.); *Bluewater Network v. EPA*, 370 F.3d 1, 18 (D.C. Cir. 2004) ("The Agency reasonably determined that regulating [hydrocarbons] would control PM pollution both because HC itself contributes to such pollution, and because HC provides a good proxy for regulating fine PM emissions."). Though these court opinions all addressed when

it was reasonable to use a surrogate in contexts different from the use of the PM₁₀ Surrogate Policy, EPA believes that the overarching legal principle from these decisions is that a surrogate may be used only after it has been shown to be reasonable (such as where the surrogate is a reasonable proxy for the pollutant or has a predictable correlation to the pollutant) and that this principle applies where an applicant or permitting authority seeks to rely upon the PM₁₀ Surrogate Policy in lieu of a PM_{2.5} analysis to obtain a PSD permit.

Second, with respect to PM surrogacy in particular, there are specific issues raised in the case law that bear on whether PM₁₀ can be considered a reasonable surrogate for PM_{2.5}. The D.C. Circuit concluded that PM₁₀ was an arbitrary surrogate for a PM pollutant that is one fraction of PM₁₀ where the use of PM₁₀ as a surrogate for that fraction is "inherently confounded" by the presence of the other fraction of PM₁₀. *ATA v. EPA*, 175 F.3d 1027, 1054 (D.C. Cir. 1999) (PM₁₀ is an arbitrary indicator for coarse PM (PM_{10–2.5}) because the amount of coarse PM within PM₁₀ will depend arbitrarily on the amount of fine PM (PM_{2.5})). In another case, however, the D.C. Circuit held that the facts and circumstances in that instance provided a reasonable rationale for using PM₁₀ as a surrogate for a fraction of PM₁₀. *American Farm Bureau v. EPA*, 559 F.3d 512, 534–35 (D.C. Cir. 2009) (where the record demonstrated that (1) PM_{2.5} tends to be higher in urban areas than in rural areas, and (2) evidence of health effects from coarse PM in urban areas is stronger, EPA reasoned that setting a single PM₁₀ standard for both urban and rural areas would tend to require lower coarse PM concentrations in urban areas. The court considered the reasoning from the *ATA* case and accepted that the presence of PM_{2.5} in PM₁₀ will cause the amount of coarse PM in PM₁₀ to vary, but on the specific facts before it held that such variation was not arbitrary.) EPA believes that these cases demonstrate the need for permit applicants and permitting authorities to determine whether PM₁₀ is a reasonable surrogate for PM_{2.5} under the facts and circumstances of the specific permit at issue, and not proceed on a general presumption that PM₁₀ is always a good surrogate for PM_{2.5}.

Thus, based on this case law, rather than simply assuming that using the 1997 PM₁₀ Surrogate Policy is always an adequate alternative for satisfying the PM_{2.5} PSD requirements, permit applicants and permitting authorities seeking to apply the 1997 PM₁₀

Surrogate Policy must ensure that the record for each permit supports using PM₁₀ as a surrogate for PM_{2.5} under the circumstances.

Finally, this case law suggests that any person attempting to show that PM₁₀ is a reasonable surrogate for PM_{2.5} would need to address the differences between PM₁₀ and PM_{2.5}. For example, emission controls used to capture coarse particles in some cases may be less effective in controlling PM_{2.5}. 72 FR 20,586, 20,617 (April 25, 2007). As a further example, the particles that make up PM_{2.5} may be transported over long distances while coarse particles normally travel shorter distances. 70 FR 65,984, 65,997–98 (November 1, 2005). Under the principles in the case law, any source or permitting authority seeking to use the PM₁₀ Surrogate Policy properly would need to consider the differences between PM₁₀ and PM_{2.5} and demonstrate that PM₁₀ is nonetheless an adequate surrogate for PM_{2.5}.⁴

III. Transition to the PM_{2.5} Requirements for States Lacking EPA-Approved PSD Programs

A. What is the existing grandfathering provision for PM_{2.5}?

As described in section II.C of this preamble, new and modified major stationary sources applying for permits under the Federal PSD program after the July 15, 2008 effective date of the May 2008 final rule must directly satisfy the requirements for PM_{2.5} rather than rely on the PM₁₀ Surrogate Policy to satisfy those requirements. However, until the EPA recently stayed the provision for three months, the grandfathering provision contained in the Federal PSD program at 40 CFR 52.21(i)(1)(xi) allowed sources that had not yet received final and effective permits, but had submitted a complete PSD permit application before the effective date of the final rule for PM_{2.5}, to continue having their application reviewed on the basis of the PM₁₀ Surrogate Policy.

In the preamble to the final rule, EPA indicated that it believed that the PM_{2.5} grandfathering provision was consistent with the existing provision under 40 CFR 52.21(i)(1)(x) whereby EPA grandfathered new and modified major stationary sources with permit applications based on PM from the then-new PM₁₀ increment requirements established in 1987. Thus, applicants would not be expected to perform new

analyses to establish compliance with the BACT and air quality requirements for PM_{2.5} in cases where they had submitted their complete applications on the basis of the PM₁₀ Surrogate Policy before the effective date of the new regulations.

At the time the grandfathering provision for PM_{2.5} was put into effect, we estimate that less than twenty proposed new or modified major stationary sources were covered. Of these, at least two projects subsequently received final and effective PSD permits after the July 15, 2008 effective date of the final rule.

B. Petitioners' 2008 Challenge to the Grandfathering Provision for PM_{2.5}

On July 15, 2008, the Natural Resources Defense Council and the Sierra Club jointly submitted a petition to the Administrator seeking reconsideration of four provisions of the May 16, 2008 final rule, including the grandfathering provision for PM_{2.5} under the Federal PSD program. In the petition, the petitioners argued that "EPA unlawfully failed to present this grandfathering provision and accompanying rationale to the public for comment." July 15 Petition at 6. Thus, petitioners argued, EPA had not given interested parties any notice of and the opportunity to comment on the grandfathering provision that EPA adopted in 40 CFR 52.21(i)(1)(xi) in the final rule. Moreover, with regard to the grandfathering provision itself, the petitioners questioned EPA's authority to waive statutory requirements by establishing such a provision and argued that "Congress specifically addressed the issue of grandfathering in section 168(b) and again allowed for the grandfathering of only those sources on which 'construction has commenced' before enactment of the 1997 Clean Air Act Amendments." July 15 Petition at 7. Finally, petitioners argued that the technical difficulties with respect to PM_{2.5} monitoring, emissions estimation and modeling that led to the adoption of the 1997 PM₁₀ Surrogate Policy no longer exist, and that those sources not falling within the grandfathering provision must conduct the required analyses for PM_{2.5} directly without relying on the PM₁₀ Surrogate Policy, and so there was no justification for the grandfathering provision. July 15 Petition at 8. In sum, petitioners asserted that the grandfathering provision in § 52.21(i)(1)(xi) was illegal and arbitrary, and requested that EPA stay the provision.

On January 14, 2009, EPA responded in a letter to the petitioners that the

Agency was denying all aspects of the petition for reconsideration.

C. Petitioners' 2009 Petition Seeking Reconsideration and a Stay of the Grandfathering Provision for PM_{2.5}

On February 10, 2009, the same petitioners submitted a second petition similar to the first to EPA. The second petition made the same arguments that were presented in the July 15, 2008 petition seeking reconsideration and an administrative stay and sought reconsideration of both the May 2008 final rule and the January 2009 denial of petitioners' first petition for reconsideration. In response to the February 2009 petition, on April 24, 2009, the Administrator reversed the Agency's earlier decision and agreed to reconsider each of the four challenged provisions. In addition, the Administrator indicated that the Agency intended to propose repealing the grandfathering provision "on the grounds that it was adopted without prior public notice and is no longer substantially justified in light of the resolution of the technical issues with respect to PM_{2.5} monitoring, emissions estimation, and air quality modeling that led to the PM₁₀ Surrogate Policy in 1997." Finally, the Administrator announced that she was administratively staying the grandfathering provision for three months under the authority of section 307(d)(7)(B) of the Act. That three-month administrative stay became effective on June 1, 2009—the date the notice announcing the stay was published in the **Federal Register**—and ended on September 1, 2009. (74 FR 26098). In order to allow additional time necessary to finalize this rulemaking, EPA proposed and promulgated a second stay that will keep the grandfathering provision stayed until June 22, 2010. See 74 FR 48153, September 22, 2009.

D. Why is EPA proposing to repeal the grandfathering provision for PM_{2.5}?

In this notice, consistent with the Administrator's April 24, 2009 letter to the petitioners, we are proposing to repeal the grandfathering provision in the Federal PSD program at 40 CFR 52.21(i)(1)(xi). As described above, the November 1, 2005, proposal provided that the revised PM_{2.5} requirements would take effect immediately in States where the Federal PSD program applies (see 70 FR 66043), and did not propose or seek comment on the continued application of the PM₁₀ Surrogate Policy to sources that submitted an application before the effective date of the new rule but had not yet received a final and

⁴ Additional discussion about the relevant case law and EPA's position on the use of PM₁₀ as a surrogate for PM_{2.5} for PSD permitting is contained in an Administrative Order issued on August 12, 2009 responding to petitioners' concerns about the use of the PM₁₀ Surrogate Policy in a PSD permit issued to Louisville Gas and Electric Company.

effective PSD permit. On review of the reconsideration petition, we agree with the petitioners that it was not appropriate to adopt the grandfathering provision without providing for public notice and comment on the concept of allowing certain sources covered by the Federal PSD program to continue to use the PM₁₀ Surrogate Policy after the effective date of the final rule. Moreover, we find that there is sufficient justification to propose repealing the grandfathering provision. The impact of a repeal will be to require sources that submitted a permit application before the effective date (July 15, 2008) of the May 16, 2008, final rule to satisfy the PSD requirements for PM_{2.5} without reliance on the PM₁₀ Surrogate Policy. However, EPA does not propose to interpret this proposed repeal to have any effect on permits that became final and effective before the stay of section 52.21(i)(1)(xi) by the Administrator.

Our proposal to repeal the grandfather provision rests primarily on the fact that the PM_{2.5} implementation issues that led to the adoption of the PM₁₀ Surrogate Policy in 1997 have been largely resolved to a degree sufficient for the owners and operators of sources and permitting authorities to conduct meaningful permit-related PM_{2.5} analyses. For example, adequate procedures for the collection of ambient PM_{2.5} are now well established throughout the country and provide data useful for the purpose of PSD permitting. Also, air quality modeling of direct PM_{2.5} emissions can be accomplished using an EPA-approved model to predict ambient PM_{2.5} impacts caused by new and modified sources of PM_{2.5} emissions. Emissions factors for calculating PM_{2.5} emissions from various source categories and equipment are available, as are national inventories of PM_{2.5} emissions.

While direct analysis of PM_{2.5} impacts may now be conducted, not all technical difficulties have been resolved. For example, EPA has not approved any models that can reliably predict the localized ambient PM_{2.5} impacts of precursors (e.g., SO₂ and NO_x) emitted from individual stationary sources. Some regional-scale photochemical transport models have been modified to provide the capability to track the transport and formation of primary and secondarily-formed PM_{2.5} from either single or multiple sources. The EPA is currently evaluating whether such source apportionment implementations in photochemical models are an appropriate option to estimate downwind transport and formation of PM_{2.5} from individual sources.

However, for the present, regional-scale models available for considering chemical transformations associated with the impacts of PM_{2.5} and its precursors are designed to account for impacts of multiple sources over relatively wide distances, and have not been approved by EPA for localized permitting purposes. This limitation results in underestimating the ambient impact of a single source that is emitting PM_{2.5} precursors in addition to direct PM_{2.5} emissions. However, this limitation does not preclude a permit applicant from determining whether the direct emissions of PM_{2.5} from the proposed source or modification will cause or contribute to a violation of the NAAQS for PM_{2.5}, and is not a valid basis for using a PM₁₀ analysis as a surrogate to satisfy the PM_{2.5} requirements.

E. What are the effects of repealing the grandfathering provision for PM_{2.5}?

If EPA adopts a final rule to repeal the grandfathering provision, any PSD permit applications covered by the grandfathering provision that have not yet been approved and issued a final and effective PSD permit will not be able to rely on the PM₁₀ Surrogate Policy to satisfy the PM_{2.5} requirements. Such applications will need to be evaluated for PM_{2.5} to ensure that the applicable administrative record for the permit application is sufficient to demonstrate compliance with the PSD requirements for PM_{2.5}, including analyses necessary to (a) demonstrate that the emissions increase from the proposed new or modified major stationary source will not cause or contribute to a violation of the PM_{2.5} NAAQS, as required by § 165(a)(3) of the Act, and (b) establish a BACT emissions limitation for PM_{2.5} in the permit, as required by § 165(a)(4) of the Act. For any permit that previously was relying on a PM₁₀ surrogate analysis, additional information is likely to be required to fulfill these requirements.

The EPA is aware of twenty-seven sources that had submitted PSD permit applications under the Federal PSD program prior to July 15, 2008—the effective date of the PM_{2.5} NSR Implementation Rule—but did not receive their permits by that date. Thus, these applications were eligible to be grandfathered to use the PM₁₀ Surrogate Policy to satisfy the PM_{2.5} requirements. For at least six of these applications, the permit was either issued or denied, or the project was cancelled, prior to June 1, 2009, when the administrative stay became effective. For most of the remaining twenty-one applications, the sources have already directly addressed,

or are planning to directly address, the applicable PM_{2.5} requirements in order to obtain a permit. At least two of the sources are reportedly planning to take enforceable emissions limitations on their PM_{2.5} emissions in order to avoid the PSD requirements for PM_{2.5} altogether.

Should the additional information that these sources acquire and analyze for PM_{2.5} result in the need to tighten the conditions pertaining to the control of PM_{2.5} emissions in any of the yet-issued permits, then direct environmental benefits would result. In any event, ending the use of the PM₁₀ Surrogate Policy will provide desired certainty to the PM_{2.5} permitting process by ensuring that all permit applicants show that their source does not cause or contribute to a violation of the PM_{2.5} NAAQS and otherwise meets all of the requirements for PM_{2.5}, and not use PM₁₀ surrogacy as means of avoiding a real analysis demonstrating that the PM_{2.5} requirements are met. We believe this certainty would outweigh any burdens caused by any delay to the permit applicants that would be affected. Nevertheless, we are herein soliciting comments concerning any such burdens that may be incurred by the affected sources to help us evaluate this proposed repeal of the grandfathering provision for PM_{2.5}.

A repeal of the grandfathering provision in a subsequent final rule would not impact any PSD permits that became final and effective in reliance on the PM₁₀ Surrogate Policy under the policy itself or the grandfathering provision that incorporated that policy by reference before the stay of that provision.

IV. Ending the PM₁₀ Surrogate Policy in SIP-Approved States

A. What is the current status of the PM₁₀ Surrogate Policy in SIP-approved States?

As described in section II.C of this preamble, the preamble to the May 2008 final NSR rule for PM_{2.5} stated that SIP-approved States may continue to implement a PM₁₀ program as a surrogate to meet the PSD program requirements for PM_{2.5} pursuant to the 1997 PM₁₀ Surrogate Policy. This continued use of the PM₁₀ Surrogate Policy was a transition measure, provided for SIP-approved States in conjunction with the three-year period provided under 40 CFR 51.166(a)(6)(i) to adopt and submit SIP revisions following the May 2008 rule. See 73 FR 28340–28341.

Although the PM₁₀ Surrogate Policy is in effect, in light of the various relevant

court decisions discussed above, it is prudent to conclude that the policy should not be read as allowing the automatic use of a PM₁₀ analysis as a surrogate for satisfying PM_{2.5} requirements. Moreover, the PM₁₀ Surrogate Policy contains limits within the policy itself. As stated in the 1997 Seitz Memorandum, the PM₁₀ Surrogate Policy provided that, in view of significant technical difficulties that existed in 1997, EPA believed that PM₁₀ may properly be used as a surrogate for PM_{2.5} in meeting NSR requirements “until these difficulties are resolved.” Seitz Memorandum at 1. In the May 2008 final rule, EPA noted that “these difficulties have largely been resolved.” See 73 FR at 28340 (col. 2–3). Thus, in addition to the case law demonstration discussed previously, a source or permitting authority seeking to rely on the PM₁₀ Surrogate Policy should identify any technical difficulties that exist to justify the application of the policy in each specific case.

B. Petitioners’ 2009 Petition Seeking Reconsideration of the Continued Use of the PM₁₀ Surrogate Policy During the Three-year Transition Period

In their February 10, 2009, petition for reconsideration, the Natural Resources Defense Council and the Sierra Club argued, among other things, that the continued use of the PM₁₀ Surrogate Policy had the effect of waiving for up to three years the requirement to assure compliance with the PM_{2.5} NAAQS, and that applicants, States and EPA have the technical ability to address the PM_{2.5} requirements directly rather than relying on a PM₁₀ analysis as a surrogate. February 2009 Petition at 4–6. As we noted previously, the Administrator granted the February 2009 petition for reconsideration in her April 24, 2009, letter.

C. Why is EPA proposing to end the PM₁₀ Surrogate Policy in SIP-approved States?

In this action, EPA is proposing to end the PM₁₀ Surrogate Policy before the end of the three-year transition period for revising SIPs (May 2011). The grounds for this proposal are that the PM_{2.5} implementation issues that led to the adoption of the PM₁₀ Surrogate Policy in 1997 have been largely resolved to a degree sufficient for sources and permitting authorities to conduct meaningful permit-related PM_{2.5} analyses. EPA had previously concluded that these difficulties had been resolved to a degree sufficient for all Federal PSD permit reviews to begin direct PM_{2.5}-based assessments as of the July 15, 2008, effective date of the May

2008 final rule. Section III.D of this preamble, which discusses our proposal to repeal the grandfathering provision in the Federal PSD program, provides a more thorough discussion of the status of technical difficulties associated with PM_{2.5} analyses. The EPA is seeking comments on whether the technical issues that gave rise to the PM₁₀ Surrogate Policy in 1997 are sufficiently resolved that the policy is no longer needed either for Federal or State permitting actions.

As mentioned earlier, in the May 2008 final rule, EPA allowed States to continue using the PM₁₀ Surrogate Policy on the grounds that States would need time to update their State laws and make SIP submissions to EPA. 73 FR at 28340–28341. In the final rule preamble, we said that “if a SIP-approved State is unable to implement a PSD program for the PM_{2.5} NAAQS based on these final rules, the State may continue to implement a PM₁₀ program as a surrogate to meet the PSD program requirements for PM_{2.5} pursuant to the 1997 guidance.” 73 FR at 28341.

The existing provisions in many State implementation plans may already provide sufficient legal authority for several SIP-approved States to begin addressing PM_{2.5} directly when issuing PSD permits. For example, if the State has adopted EPA’s definition of “regulated NSR pollutant,” then PM_{2.5} falls within this definition, because PM_{2.5} is a “pollutant for which a national ambient air quality standard has been promulgated.” 40 CFR 51.166(b)(49)(i); 40 CFR 52.21(b)(50)(i). Therefore, such States may already have an EPA-approved SIP that authorizes the State to establish BACT limits for PM_{2.5} and to demonstrate that a source will not cause or contribute to a violation of the PM_{2.5} NAAQS using direct air quality modeling of the proposed unit’s direct emissions of PM_{2.5} to project the impact on the PM_{2.5} NAAQS.

One complication for States that seek to implement a full PM_{2.5} analysis immediately under their existing SIPs may be the absence of a significant emissions rate for PM_{2.5}. See, 73 FR at 28340. Assuming a State that has adopted EPA’s definition of “regulated NSR pollutant” also applies EPA’s definition of “significant emissions rate,” then under the latter definition, any increase in emissions of PM_{2.5} will be deemed significant. 40 CFR 51.166(b)(23)(ii); 40 CFR 52.21(b)(23)(ii). The most significant implication of the latter may be that some sources making modifications that increase PM_{2.5} emissions in amounts less than 10 tons per year may have to undertake

additional PSD review that would not be required if the State’s SIP included the significant emissions rate for PM_{2.5} set forth in EPA’s May 2008 final rule.

The EPA requests comments on whether SIP-approved States should be considered “unable to implement a PSD program for the PM_{2.5} NAAQS” because they lack the legal authority to implement the PSD program for PM_{2.5}. In this context it would be helpful to hear commenters’ views on whether the legal authority of SIP-approved States to implement a PM_{2.5} program is impeded by the absence of a significant emissions rate for PM_{2.5} or whether other factors present significant complications for States.

The EPA also recognizes that there are other issues that could impact the decision to end the PM₁₀ Surrogate Policy. To help EPA consider these issues, we are specifically seeking comment on several additional questions. These questions are as follows:

- What are the environmental benefits or harms that will result from ending the policy before May 2011, and what are the environmental benefits or harms that will result if the PM₁₀ Surrogate Policy is left in place until May 2011?
- What implementation difficulties for State permitting authorities or PSD applicants seeking permits will result from ending the PM₁₀ Surrogate Policy before the three-year transition period?

In addition, EPA invites comments on any other points that interested parties believe are relevant to whether the PM₁₀ Surrogate Policy continues to be necessary for implementing the Act’s PM_{2.5} requirements.

D. What are the effects of ending the PM₁₀ Surrogate Policy in SIP-approved States?

When the PM₁₀ Surrogate Policy ends in SIP-approved States, the effects will be the same as those described previously in section III.E of this preamble, which discusses the effects of the proposed repeal of the grandfathering provision in States where the Federal PSD program applies. If EPA decides to end the PM₁₀ Surrogate Policy before the end of the original transition period in States with SIP-approved PSD programs, EPA is proposing that new and modified major sources seeking permits in such States would be thereafter required to conduct permit-related analyses based on PM_{2.5} rather than PM₁₀. EPA is taking comment on what kind of transition process, if any, should be allowed if

EPA decides to end the PM₁₀ Surrogate Policy in the final rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a “significant regulatory action” because it raises novel legal or policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden that is not already accounted for in the approved information collection request (ICR) for the NSR program. We are not proposing any new paperwork requirements (e.g., monitoring, reporting, recordkeeping) as part of this proposed action. This action proposes to amend one part of the regulations at 40 CFR 52.21 by repealing the grandfathering provision that affects about twenty-one sources, and to end the use of the 1997 PM₁₀ Surrogate Policy in SIP-approved States. However, the approved ICR for the NSR program was prepared as if the 2008 rule that added PM_{2.5} to the NSR program would be fully implemented immediately upon the effective date of the rule, without any phase-in period during which the grandfathering provision or 1997 PM₁₀ Surrogate Policy would apply. Thus, while this action will result in increased permitting burden for those sources who would have otherwise been able to use the grandfathering provision or PM₁₀ Surrogate Policy, this burden is already included in the approved ICR. The OMB previously approved the information collection requirements contained in the existing regulations (40 CFR parts 51 and 52) under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.*, and assigned OMB control number 2060–0003. The OMB control numbers for EPA’s regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) 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 proposal on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration’s (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any new requirements on small entities. We have determined that small businesses will not incur any adverse impacts because EPA is taking this action to propose one amendment to the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early our policy of allowing SIP-approved States to use the PM₁₀ Surrogate Policy. This does not create any new requirements or burdens. No costs are associated with this amendment.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

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 (“URMA”), 2 U.S.C. 1531–1538 for State, local, and tribal governments or the private sector. This action only proposes to amend one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early our policy of allowing SIP-approved States to use the PM₁₀ Surrogate Policy. Therefore, this action is not subject to the requirements of sections 202 or 205 of 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.

E. Executive Order 13132: Federalism

This action 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. This action only proposes to amend one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision for PM_{2.5} that affects about twenty-one sources), and to end early our policy allowing SIP-approved States to use the PM₁₀ Surrogate Policy. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000.) This action will not impose any new obligations or enforceable duties on tribal governments.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. In fact, this action will help ensure that the health-based national standards for PM_{2.5} are adequately protected against the adverse effects of PM_{2.5} emissions from new and modified sources of air pollution by ending the use of a surrogate analyses for PM_{2.5} impacts.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order

13211 (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. EPA is proposing to amend one part of the regulations at 40 CFR 52.21 (expected to affect about twenty-one regulated entities), and to end early the use of the PM₁₀ Surrogate Policy in SIP-approved States. In both instances, only a portion of the affected sources are involved in the production or distribution of energy.

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, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

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 United States.

EPA has concluded that it is not practicable to determine whether there would be disproportionately high and adverse human health or environmental effects on minority and/or low income populations from this proposed rule. The rule proposes only to amend to one part of the regulations at 40 CFR 52.21 (by repealing the grandfathering provision that affects about twenty-one sources), and to end early the PM₁₀ Surrogate Policy in SIP-approved States. The affected sources, after further analysis and data collection, may receive permitted emissions limits that are equally or more protective of public health than would be likely in the absence of this proposed rule change.

K. Determination Under Section 307(d)

Pursuant to sections 307(d)(1)(I) and 307(d)(1)(V) of the CAA, the

Administrator determines that this action is subject to the provisions of section 307(d). Section 307(d)(1)(V) provides that the provisions of section 307(d) apply to “such other actions as the Administrator may determine.”

VI. Statutory Authority

The statutory authority for this action is provided by section 301(a) of the CAA as amended (42 U.S.C. 7601(a)). This notice is also subject to section 307(d) of the CAA (42 U.S.C. 7407(d)).

List of Subjects in 40 CFR Part 52

Administrative practices and procedures, Air pollution control, Environmental protection, Intergovernmental relations.

Dated: February 4, 2010.

Lisa P. Jackson,
Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be 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.*

§ 52.21 [Amended]

2. In § 52.21, remove paragraph (i)(1)(xi).

[FR Doc. 2010–2983 Filed 2–10–10; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 75, No. 28

Thursday, February 11, 2010

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 HEALTH AND HUMAN SERVICES

President's Advisory Council on Faith-Based and Neighborhood Partnerships

AGENCY: President's Advisory Council on Faith-based and Neighborhood Partnerships, Department of Health and Human Services.

ACTION: Announcement of Meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the President's Advisory Council on Faith-based and Neighborhood Partnerships announces a meeting. The meeting is titled *President's Advisory Council on Faith-based and Neighborhood Partnerships Council Meetings*.

DATES: The meeting dates are:

1. February 25, 2010, Thursday, 4 p.m. to 6 p.m., Eastern Standard Time (EST).

2. February 26, 2010, Friday, 2 p.m. to 4 p.m., Eastern Standard Time (EST).

ADDRESSES: Meetings will be held via conference call. The dial-in number for both call meeting dates is: 800-857-8628, Passcode 9789555.

FOR FURTHER INFORMATION CONTACT: Please contact Mara Vanderslice to RSVP for the conference calls, and any additional information about the Advisory Council conference calls at mvanderslice@who.eop.gov.

SUPPLEMENTARY INFORMATION:

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Status: Open to the public, limited only by lines available.

Agenda: Topics to be discussed include deliberations on reports from the Council's six Taskforces: Economic Recovery and Domestic Poverty, Reform of the Office, Environment and Climate Change, Inter-Religious Cooperation, Fatherhood and Healthy Families and Global Poverty and Development. For copies of these reports, please contact Mara Vanderslice at mvanderslice@who.eop.gov.

Public Comment: There will be an opportunity for public comment at the end of the conference calls.

Exceptional Circumstances Justifying Late Notice: This notice may be published in the **Federal Register** less than 15 calendar days prior, due to exceptional circumstances. The Federal Government was closed due to inclement weather and therefore publication of this notice could be delayed.

Dated: February 8, 2010.

Mara L. Vanderslice,
Special Assistant.

[FR Doc. 2010-3003 Filed 2-10-10; 8:45 am]

BILLING CODE 4154-07-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCAD00000; L19900000.AL0000]

Notice of Call for Nominations for Bureau of Land Management's California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management's (BLM) California Desert District is soliciting nominations from the public to fill five seats for 3-year terms on its District Advisory Council from 2010-2012. Council members provide advice and recommendations to the BLM on the management of public lands in Southern California.

DATES: Nominations will be accepted through Friday, April 21, 2010.

ADDRESSES: Nominations should be sent to the District Manager, Bureau of Land Management, California Desert District Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553.

FOR FURTHER INFORMATION CONTACT:

David Briery, BLM California Desert District External Affairs, at (951) 697-5220.

SUPPLEMENTARY INFORMATION: The California Desert District Advisory Council consists of 15 private individuals who represent different interests and advise BLM officials on policies and programs concerning the management of 11 million acres of public land in Southern California. The Council meets in formal session three to four times each year in various locations throughout the California Desert District. Members serve a 3-year term and may be nominated for reappointment for an additional 3-year term.

Section 309 of the Federal Land Policy and Management Act directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to management of BLM-administered lands. The Secretary also selects council nominees consistent with the requirements of the Federal Advisory Committee Act, which requires that nominees appointed to the Council be fairly balanced in terms of points of view and representative of the various interests concerned with the management of the public lands.

The Council also is balanced geographically, and the BLM will try to find qualified representatives from areas throughout the California Desert District (District). The District covers portions of eight counties, and includes about 11 million acres of public land in the California Desert Conservation Area and 300,000 acres of scattered parcels in San Diego, western Riverside, western San Bernardino, Orange, and Los Angeles Counties (known as the South Coast).

The 3-year term would begin immediately upon appointment by the Secretary.

The five positions to be filled include:

- One renewable resources representative
- one elected official
- one environmental protection representative
- two members of the public-at-large

Any group or individual may nominate a qualified person. A person must be qualified through education, training, knowledge, or experience to give informed and objective advice regarding an industry, discipline, or interest specified in the council's

charter; have demonstrated experience or knowledge of the geographical area under the purview of the advisory council; have demonstrated a commitment to collaborate in seeking solutions to a wide spectrum of resource management issues; and have the ability to represent their designated constituency. Qualified individuals also may nominate themselves.

Nominations must include the name of the nominee; work and home addresses; email and telephone numbers; a biographical sketch that includes the nominee's work and public

service record; any applicable outside interests or other information that demonstrates the nominee's qualifications for the position; and the specific category of interest in which the nominee is best qualified to offer advice and counsel. Nominees may contact the BLM California Desert District External Affairs staff at (951) 697-5220 or write to the address listed above and request a copy of the nomination form.

All nominations must be accompanied by letters of reference from represented interests, organizations, or elected officials

supporting the nomination. Individuals nominating themselves must provide at least one letter of recommendation. The Obama Administration prohibits individuals who are currently federally registered lobbyists to serve on all FACA and non-FACA boards, committees or councils.

Jack L. Hamby,

Acting District Manager.

[FR Doc. 2010-2853 Filed 2-10-10; 8:45 am]

BILLING CODE 4310-40-P

Reader Aids

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Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at <http://www.regulations.gov>.

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at <http://bookstore.gpo.gov/>.

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LIST OF PUBLIC LAWS

This is the final list of public bills from the 1st session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 1817/P.L. 111-128

To designate the facility of the United States Postal Service located at 116 North West Street in Somerville, Tennessee, as the "John S. Wilder Post Office Building". (Jan. 29, 2010; 123 Stat. 3487)

H.R. 2877/P.L. 111-129

To designate the facility of the United States Postal Service

located at 76 Brookside Avenue in Chester, New York, as the "1st Lieutenant Louis Allen Post Office". (Jan. 29, 2010; 123 Stat. 3488)

H.R. 3072/P.L. 111-130

To designate the facility of the United States Postal Service located at 9810 Halls Ferry Road in St. Louis, Missouri, as the "Coach Jodie Bailey Post Office Building". (Jan. 29, 2010; 123 Stat. 3489)

H.R. 3319/P.L. 111-131

To designate the facility of the United States Postal Service located at 440 South Gulling Street in Portola, California, as the "Army Specialist Jeremiah Paul McCleery Post Office Building". (Jan. 29, 2010; 123 Stat. 3490)

H.R. 3539/P.L. 111-132

To designate the facility of the United States Postal Service located at 427 Harrison Avenue in Harrison, New Jersey, as the "Patricia D. McGinty-Juhl Post Office Building". (Jan. 29, 2010; 123 Stat. 3491)

H.R. 3667/P.L. 111-133

To designate the facility of the United States Postal Service located at 16555 Springs Street in White Springs, Florida, as the "Clyde L. Hillhouse Post Office Building". (Jan. 29, 2010; 123 Stat. 3492)

H.R. 3767/P.L. 111-134

To designate the facility of the United States Postal Service located at 170 North Main Street in Smithfield, Utah, as the "W. Hazen Hillyard Post Office Building". (Jan. 29, 2010; 123 Stat. 3493)

H.R. 3788/P.L. 111-135

To designate the facility of the United States Postal Service located at 3900 Darrow Road in Stow, Ohio, as the "Corporal Joseph A. Tomci Post Office Building". (Jan. 29, 2010; 123 Stat. 3494)

H.R. 1377/P.L. 111-137

To amend title 38, United States Code, to expand veteran eligibility for reimbursement by the Secretary of Veterans Affairs for emergency treatment furnished in a non-Department facility, and for other purposes. (Feb. 1, 2010; 123 Stat. 3495)

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

H.R. 4508/P.L. 111-136

To provide for an additional temporary extension of programs under the Small Business Act and the Small Business Investment Act of 1958, and for other purposes. (Jan. 29, 2010; 124 Stat. 6; 1 page)

S. 692/P.L. 111-138

To provide that claims of the United States to certain documents relating to Franklin Delano Roosevelt shall be treated as waived and relinquished in certain circumstances. (Feb. 1, 2010; 124 Stat. 7; 1 page)

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